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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Panel discussion on the effects of terrorism on the enjoyment by all persons of human rights and fundamental freedoms*

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to Human Rights Council resolution 28/17. It provides a summary of the panel discussion on the effects of terrorism on the enjoyment by all persons of human rights and fundamental freedoms, held on 30 June 2015, during the twenty-ninth session of the Council.

* Late submission

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I. Introduction

1. Pursuant to its resolution 28/17 entitled "Effects of terrorism on the enjoyment of human rights", the Human Rights Council convened a panel discussion on the effects of terrorism on the enjoyment by all persons of human rights and fundamental freedoms, on 30 June 2015.[1]

2. The panel discussion was chaired and moderated by the Vice-President of the Human Rights Council, Mothusi Bruce Rabasha Palai. The United Nations Deputy High Commissioner for Human Rights, Flavia Pansieri, delivered the opening address. The panellists were Ben Emmerson, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Steven Siqueira, Deputy Director, Counter-Terrorism Implementation Task Force Office and the United Nations Counter-Terrorism Centre; and Mauro Miedico, Chief of the Implementation Support Section III, Terrorism Prevention Branch, United Nations Office on Drugs and Crime (UNODC).

3. Also in resolution 28/17, the Human Rights Council requested the United Nations High Commissioner for Human Rights to prepare a report on the panel discussion in the form of a summary and to submit it to the Council at its thirtieth session. The present report is submitted pursuant to that request.

II. Opening statement

4. In her opening statement, the United Nations Deputy High Commissioner stated that terrorism destabilized Governments, undermined societies, jeopardized peace and security and threatened economic and social development, all of which had serious implications for the enjoyment of human rights by all. Terrorist attacks had devastating consequences for victims, often directly impacting their rights to life, liberty and security. However, direct victims were not the only ones affected; relatives and entire communities lived in fear and suffered long-standing trauma following attacks. The recent spate of attacks illustrated the direct impact of terrorism on human rights.

5. The human rights of victims of terrorism needed to be acknowledged and their loss and dignity recognized. Victims needed immediate assistance and long-term medical, psychosocial and financial support to compensate for the destruction of their property or loss of their livelihood and jobs. Victims also had the right to equal access to justice and an effective remedy, with a view to benefiting from adequate and prompt reparation for the harm suffered.

6. For counter-terrorism efforts to be successful, dealing with the aftermath of terrorism was not sufficient, rather prevention was necessary and critical. Prevention of terrorism required understanding the conditions conducive to such abhorrent acts, including a deeper appreciation of the linkages between such conditions and the lack of respect for human rights, corruption, impunity, absence of rule of law and lack of development and prospects for a peaceful future. Terrorism tended to thrive in situations of prolonged armed conflict, chronic instability and systemic human rights violations, including discrimination.

[1] All written contributions to the discussion are available at https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/29thSession/Pages/OralStatement.aspx?MeetingNumber=37&MeetingDate=Tuesday,30 June 2015.

exclusion and lack of participation in political life and the conduct of public affairs and socioeconomic marginalization. Those problems were often compounded by a lack of accountability – with impunity of perpetrators prevailing in many situations –, a lack of access to justice and a remedy for victims of human rights violations and abuses. The Deputy High Commissioner emphasized that, in that context, States had the primary responsibility for investigating and, where evidence warranted, prosecuting the perpetrators of violations in full compliance with international norms, in particular those regarding due process and fair trial.

7. Through the United Nations Global Counter-Terrorism Strategy adopted by the General Assembly in September 2006 (see General Assembly resolution 60/288), Member States had agreed a holistic, integrated and effective approach to counter terrorism, with human rights and rule of law as its basis. The Deputy High Commissioner noted, however, that the Strategy had not yet translated into uniform practice on the ground. She also noted that measures taken by a number of States in the wake of recent security threats continued to raise serious human rights concerns. In line with the Strategy and international law, regular review of counter-terrorism laws and practices was critical to ensure that they are human rights-compliant and, in particular, specific, necessary, effective and proportionate. The Deputy High Commissioner recalled that such review was particularly important given that some States had enacted broadly formulated counter-terrorism legislation that did not comply with the principle of legality because it lacked sufficiently precise definitions of what constituted terrorist acts. The breadth and scope of that type of legislation allowed for arbitrary or discriminatory enforcement by authorities. The application of the death penalty to broadly construed terrorism-related offences also remained a serious concern, especially where such offences did not rise to the level of "most serious crimes", the threshold required by article 6 of the International Covenant on Civil and Political Rights. The Deputy High Commissioner also noted that some States sought to bypass the criminal justice system by using administrative detention, other forms of detention and control orders on persons suspected of terrorism, without respecting the safeguards enshrined in international law. Such laws had been used to curb otherwise legitimate activities and to target journalists, human rights defenders, minority groups and other individuals, some of whom had been arbitrarily detained and tortured or subjected to cruel, inhuman and dehumanizing treatment or punishment while in custody.

8. Noting that the rights to freedom of opinion and expression constitute the foundation for every free and democratic society, the Deputy High Commissioner discussed the relationship between counter-terrorism laws and those rights. In accordance with international human rights law, any restriction on freedom of expression must be clearly and narrowly defined and must meet the three-part test of legality, proportionality and necessity. Offences such as "encouragement of terrorism", "extremist activity", "praising" "glorifying" or "justifying" terrorism must be clearly defined so as not to interfere unnecessarily and disproportionately with freedom of expression.

9. Lastly, the Deputy High Commissioner recalled that experience at the national level showed that protecting human rights and ensuring respect for the rule of law contributed to countering terrorism, in particular by creating a climate of trust between the State and those under its jurisdiction and by supporting the resilience of communities to threats of violent radicalism. Conversely, undue restrictions on human rights had proven corrosive to the rule of law and conducive to a climate of impunity and might therefore undermine the effectiveness of counter-terrorism measures. It was time to stop basing policy on the false dichotomy between security and human rights, which, she emphasized, were complementary and mutually reinforcing. States should focus on policies and initiatives that increase the enjoyment of all rights — not just civil and political rights, but also economic, social and cultural rights. Swiftly addressing actual or perceived marginalization or exclusion of particular communities was crucial.

III. Statements by panellists

10. The panellists emphasized the complementarity and mutually reinforcing nature of security and human rights and stressed that respect for international law, including international human rights law, was of key importance when taking measures to combat terrorism. The devastating impact of terrorism on the enjoyment of human rights and the importance of recognizing the rights of victims of terrorism were also noted.

11. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism endorsed the Deputy High Commissioner's opening remarks and stated that the core of his mandate was to ensure the protection and promotion of human rights while countering terrorism. He emphasized the importance of the core guiding principles of the United Nations Global Counter-Terrorism Strategy, which put the rule of law and promotion of human rights at the front and centre of all counter-terrorism action.

12. The Special Rapporteur stated that victims of terrorism deserved more attention. He considered it striking that, despite the proliferation of counter-terrorism agreements, none of those negotiated under the auspices of the United Nations focused on the rights of victims. In his first report to the Human Rights Council in 2012 (A/HRC/20/14), the Special Rapporteur proposed framework principles for securing the human rights of victims of terrorism, focusing on effective prevention, investigation, due process rights and the responsibility of States to provide reparations to victims. He urged all States to recognize that human rights violations in the context of terrorism could be committed by State and non-State actors alike. He welcomed the high-level conference planned by the Counter-Terrorism Implementation Task Force Office in the coming months to discuss and move forward on the framework principles. However, he noted that highly influential non-governmental organizations (NGOs) and States rejected the notion that terrorist acts could amount to human rights violations. From a victim-centred perspective, he believed that the stance that only States could commit human rights violations was dangerous and that human rights law must keep pace with the changing world in order to retain its validity. To deny that victims of terrorism have suffered grave and often gross and systematic human rights violations would be to render them prisoners of doctrine.

13. In his report on the human rights challenges posed by the fight against the Islamic State in Iraq and the Levant (ISIL) (A/HRC/29/51), the Special Rapporteur noted the failure of the Security Council to take effective action to enforce international law and protect civilians in areas under ISIL control and stressed the need for the international coalition of States currently engaged in military action against ISIL in Iraq and the Syrian Arab Republic to ensure that effective steps were taken to minimize the risk of civilian casualties and to be transparent about such losses when they occur. While there were some human rights concerns in respect of the conduct of international coalition forces in Iraq, he found that, based on the available evidence, the coalition-inflicted casualties paled in comparison to the horrific crimes systematically committed by ISIL. The report provides an assessment of the scale of the violations of international law committed by ISIL in the territory it occupies, which include crimes reportedly amounting to genocide, crimes against humanity, serious violations of international humanitarian law and gross violations of international human rights law. The findings of the Independent International Commission of Inquiry on the Syrian Arab Republic, the United Nations Assistance Mission for Iraq and the Office of the United Nations High Commissioner for Human Rights (OHCHR) showed clear evidence of persecution of religious and ethnic minority communities, including the Yezidis; arbitrary executions of community leaders, journalists, intellectuals and others; mass disappearances; forced religious conversion; and systematic torture. The enforcement of summary justice in areas under ISIL control included public beheadings, stoning,

amputations, lashes, displays of mutilated corpses as a purported deterrent, systematic gender-based violence, rape, sexual slavery and the targeting of sexual minorities. Children had been subjected to summary executions, arbitrary detention and torture. The Special Rapporteur underlined that those were all crimes and violations of international humanitarian law which amounted to grave human rights violations.

14. The Deputy Director of the Counter-Terrorism Implementation Task Force Office and the United Nations Counter-Terrorism Centre noted the continuing need to address the ever-changing phenomenon of terrorism in the lead-up to the tenth anniversary of the United Nations Global Counter-Terrorism Strategy in 2016. He reaffirmed the importance of ensuring that responses and effective solutions to terrorism remained grounded within the four pillars of the Strategy, and highlighted that the Strategy considered security and human rights as complementary and mutually reinforcing.

15. The Deputy Director stated that the Counter-Terrorism Implementation Task Force comprised 36 United Nations and affiliated entities. The main functions of the Counter-Terrorism Implementation Task Force Office was to coordinate and facilitate United Nations counter-terrorism initiatives and activities and provide support to Member States in preventing and combating terrorism. He noted the key role played by OHCHR within the Counter-Terrorism Implementation Task Force Office to ensure that its programmatic work was based on the international human rights legal framework. The establishment of the United Nations Counter-Terrorism Centre within the Counter-Terrorism Implementation Task Force Office in 2011, with the support of the Government of Saudi Arabia and other donors, has allowed it to better support capacity-building efforts for Member States under the rubric of the United Nations Global Counter-Terrorism Strategy. Both the Counter-Terrorism Implementation Task Force Office and the United Nations Counter-Terrorism Centre give high priority to the protection of human rights while combating terrorism and to supporting victims of terrorism, in addition to other strategic priorities.

16. Terrorist groups are tearing apart the social fabric of countries and the four pillars of the United Nations. Human rights abuses and violations are carried out on an unprecedented scale, creating flows of refugees and internally displaced persons not seen since the end of the Second World War. ISIL in particular has committed egregious human rights violations and must be held to account.

17. National, regional and international efforts to respond to terrorism through military or other means had sometimes been disproportionate, resulting in violations of human rights and a lack of protection of civilians and civilian infrastructure, which had effectively provided terrorist groups with fuel for more hatred. Respect for human rights must remain the foundation of counter-terrorism efforts. In that context, the entities of the Counter-Terrorism Implementation Task Force would continue to support efforts to strengthen the responses of Member States to terrorist acts to ensure that they are grounded in respect for international human rights law, international humanitarian law and international refugee law, including through capacity-building and training.

18. The Counter-Terrorism Implementation Task Force Office coordinates 11 Working Groups that deal with various issues, including border security, countering the financing of terrorism, security for critical infrastructure, support for human rights while countering terrorism and victims of terrorism. Those Working Groups have increased the capacity of Member States to counter terrorism through a number of important initiatives. For example, the Working Group on promoting and protecting human rights and the rule of law seeks to build the capacity of law enforcement institutions in Member States through a training curriculum based on human rights-compliant approaches within a counter-terrorism context on issues such as detention, special investigative techniques, use of force and investigative interviewing. The Counter-Terrorism Implementation Task Force Office has already piloted training in Nigeria, and will soon roll out training sessions in other interested Member

States. With regard to prevention, the Secretary-General is expected to launch a plan of action on preventing violent extremism later in 2015. It is aimed at reinvigorating the universal core values of the international community, based on the Charter of the United Nations and the Universal Declaration of Human Rights, and to present concrete proposals on how the United Nations system and Member States could best approach the challenge of violent extremism leading to terrorism.

19. The recent terrorist attacks in Tunisia, Kuwait, France and Egypt further emphasized the need for States to uphold their obligation to ensure security for those under their jurisdiction. However, this must not be at the expense of their human rights obligations under international law. Human rights violations can lead to further radicalization towards violence, especially of youth. In particular, the rights to the freedoms of speech, association and assembly should not be arbitrarily restricted, as they are fundamental to helping societies to combat violent extremism. On 16 June 2015, the United Nations Counter-Terrorism Centre organized an online panel discussion entitled "An exit for extremists: digital solutions for online counter-radicalization", in which Google Ideas, Facebook and civil society participated. The panel discussed how to handle online content that called for violence and how to monitor material communicated through the networks, while at the same time ensuring privacy, freedom of expression and access to information. The discussion highlighted the importance of being more inclusive and engaging more with the private sector.

20. With regard to victims of terrorism, the international community was urged to acknowledge that it was often ordinary individuals who bore the brunt of acts of terrorism. The Counter-Terrorism Implementation Task Force Office established a portal[2] to provide victims of terrorism with the necessary resources and information, including those provided by Member States and civil society. The Counter-Terrorism Implementation Task Force Office and the United Nations Counter-Terrorism Centre were deeply committed to ensuring that victims were at the centre of their activities. To that end, both the Counter-Terrorism Implementation Task Force Office and the United Nations Counter-Terrorism Centre had promoted solidarity for victims of terrorism, provided assistance and rehabilitative services and ensured that victims of terrorism had a voice in counter-narratives to violent extremism. The Counter-Terrorism Implementation Task Force Office also planned to provide training in order to empower victims of terrorism to be part of effective counter-narrative strategies.

21. The Chief of Implementation Support Section III referred to the ways in which terrorism threatened the core values of the United Nations and represented an assault on the rule of law, human rights and international peace and security. He emphasized the crucial role of technical assistance and capacity-building in preventing and countering terrorism, the need to do more to protect and to take preventive action and the importance of increasing the capacity of States to ensure human rights and rule of law-based responses to terrorism.

22. Terrorism violated the most basic human rights, including the right to life, among other civil and political rights, as well as economic, social and cultural rights. The importance of the right to security of person was a fundamental right enshrined in article 3 of the Universal Declaration of Human Rights. Unfortunately, security was often wrongly perceived as limiting human rights. He quoted a Tunisian activist, Amira Yahyaoui, who had recently stated:

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[2] See www.un.org/victimsofterrorism/en

> For human rights activists, security is a taboo. Security means you are anti-human rights. But that gives space to those who are not very keen on human rights to take care of this topic. I think that people from a human rights background should be more involved in security issues, and stop thinking that security is a taboo. If we want to defend people's rights, the first thing we need to defend is their right to live and not to die. That's the first step.[3]

23. The international community now recognized the important nexus between security and development and their interdependence. The new comprehensive, integrated and universal sustainable development goals should provide an important framework for a United Nations common effort in this area.[4] On the one hand, the new agenda recognizes the need to build peaceful, just and inclusive societies; on the other hand, it is expected that at the summit to be held in September 2015, when the post-2015 development agenda is expected to be adopted, Member States will recognize the need to "strengthen national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime".[5]

24. UNODC supported Member States in implementing the United Nations Global Counter-Terrorism Strategy, in particular its criminal justice aspects. The Terrorism Prevention Branch supported Member States' efforts to ensure effective and efficient criminal justice responses to prevent and counter terrorism, including by developing multi-year cooperation plans with a number of countries.

25. The right to be protected was emphasized as a key aspect of the right to security of person. In recent years, traditional security-oriented approaches had been increasingly recognized as insufficient to effectively address the threat of terrorism, particularly in the medium and long term. UNODC believed that a long-term approach to countering terrorism must encompass prevention, with more focus on the plans and activities of terrorist groups. Such a preventative approach required that lawful investigative and evidentiary mechanisms be established by Member States to facilitate prosecutorial intervention before tragedies occur, while respecting procedural safeguards.

26. Criminalization was an important tool for preventing violent extremism, however, it carried significant risks of arbitrary limitations on the right to the freedoms of expression, religion and association. Therefore, UNODC was enhancing its efforts to assist Member States in developing legislation and criminal justice capacities to punish conduct that spread ideas supportive of violent extremism, while complying with fundamental freedoms. For example, terrorists utilized the Internet to recruit terrorists and incite the commission of acts of terror. The Internet also allowed terrorists to spread their message to a worldwide audience at a low cost. UNODC has developed specialized training programmes that address the facilitation of violent extremism over the Internet.

27. The international community needs to do more in the area of preventing radicalization to violence in prison settings. UNODC assisted Member States in building and reforming their prison systems and in implementing non-custodial sanctions and measures aimed at the prevention of violent extremism in compliance with human rights.

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[3] Amira Yahyaoui, President, Al Bawsala NGO, Tunisia, quoted in Ilya Lozovsky, *A Wake-Up Call for NGOs*, *Foreign Policy*, 5 June 2015, available from http://foreignpolicy.com/2015/06/05/a-wake-up-call-for-ngos-tunisia-arab-spring-oslo-freedom-forum/

[4] For more information on the post-2015 sustainable development goals process, see the United Nations Sustainable Development Knowledge Platform, available at https://sustainabledevelopment.un.org/?menu=1300.

[5] Goal 16 (a) of the proposed sustainable development goals.

28. Policymakers increasingly recognized the important role that victims of terrorism and their stories could play in efforts to counter violent extremism. UNODC integrated programmes on victims of terrorism in its technical assistance to Member States. Strengthening criminal justice responses to support victims enhanced the resilience of States to counter terrorism and violent extremism.

29. Developing the capacity of States to ensure rule of law-based responses to terrorism was underscored as being the most important factor in preventing terrorism and violent extremism. Several General Assembly and Security Council resolutions identified human rights violations as major factors conducive to terrorism, including, to a significant extent, human rights violations committed in the context of countering terrorism. There was often a perception in United Nations forums that the right to security and the security of rights were, by definition, limiting, if not in contradiction with one another. That is a totally faulty perception because both concepts are complementary. There is no security if the right to security of person is not properly recognized and protected. Likewise, there is no right to security of person if the protection and security of all other rights are not ensured. The Chief of Implementation Support Section III concluded by quoting the Secretary-General: "Missiles may kill terrorists. But I am convinced that good governance is what will kill terrorism."[6]

IV. Summary of the discussion

30. During the ensuing discussion, contributions were made by representatives of Albania (on behalf of a group of States), Algeria, Austria, Bahrain, Belgium, China, Cuba, Denmark (on behalf of the Nordic States), Ecuador (on behalf of the Community of Latin American and Caribbean States), Egypt, Estonia, Hungary (on behalf of a group of States), India, Iran (Islamic Republic of), Ireland, Jordan, Kuwait, Morocco, Namibia, the Netherlands, the Niger, Pakistan, Saudi Arabia, Sierra Leone, Switzerland (on behalf of a group of States), the Syrian Arab Republic, the United States of America and Viet Nam, as well as the Council of Europe, the European Union, the Holy See and the International Organization of la Francophonie. Statements by Australia, Brazil, Fiji, Iraq, Lebanon, Libya, Mauritania, Norway, the Russian Federation, South Africa, the Sudan and Tunisia were not delivered owing to lack of time. Copies of their statements were, however, posted on the Human Rights Council extranet.

31. Representatives of the following national human rights institutions and NGOs also took the floor: Human Rights Council of Morocco, Human Rights Watch (in a joint statement with International Service for Human Rights and International Federation for Human Rights Leagues), Al Salam Foundation, CIVICUS World Alliance for Citizen Participation, Friends World Committee for Consultation (in a joint statement with Amnesty International), Organization for Defending Victims of Violence, Arab Commission for Human Rights and Amuta for NGO Responsibility.

A. Effect of terrorism on the enjoyment of human rights

32. Many delegates began their statements by offering condolences to the people of Tunisia, France, Kuwait and Egypt, which had recently suffered terrorist attacks, and the people of the Syrian Arab Republic, Iraq and Nigeria, who were victims of terrorist attacks on an almost daily basis. Most delegates found that terrorism constituted a serious

[6] See the Secretary-General's remarks at the G7 working session on Terrorism, held at Schloss Elmau, Germany, on 8 June 2015.

challenge for all States and a grave threat to international peace and security, and that they had had a dire impact on the ability of all persons to enjoy their human rights. One delegate considered that the international community was experiencing terrorism that was transcending traditional borders in an unprecedented way.

33. Another delegate stated that the effect of terrorism on human rights should be studied because no country was safe from terrorism, as witnessed in Kuwait, Tunisia and France, the week before the discussion, and in Egypt, the day before the discussion, where the Prosecutor General was murdered in a terrorist attack. Some aspects of the resolution, further to which the panel discussion had been convened, were highlighted, for example, focus on the effects of terrorism on the enjoyment of various rights, especially the rights to safety and life, and other political, economic and cultural rights. It was underlined that fighting terrorism and protecting human rights were mutually reinforcing and that effectively combating terrorism required cooperation among all stakeholders.

34. Some delegates noted that terrorism could strike anywhere and at any time and that terrorist acts had very negative effects on the enjoyment of human rights, including depriving individuals of the right to life, liberty, health and security of person, as well as economic, social and cultural rights, including access to food and water, education and health services. One delegate described how terrorist acts had led not only to a heavy death toll, but also to the movement of several thousands of refugees and internally displaced persons in its territory. Another delegate said that attacks on religious establishments undermined the right to freedom of religion and belief and the right to security of person, and led to destruction of private property. The representative of an NGO stated that violent acts by groups of non-State actors against the general population for political purposes constituted abhorrent crimes that, when widespread or systematic, could amount to crimes against humanity.

35. Many delegates pointed out that terrorism was not linked to any religion, ethnic group, nationality or nation. Some specified that spreading fear — which is the aim of terrorism — was contrary to religious teachings and practices, which called for peace. The international community need to ensure that counter-terrorism efforts do not stigmatize certain communities; it was regretted that Muslims were often believed to be a threat.

36. One delegate urged States to adopt and implement multidimensional national strategies for combating terrorism, stating that spreading awareness about human rights and the values of tolerance was critical. Engagement with imams with a view to promoting the ideals of tolerant Islam was highlighted as a powerful tool for fostering a society free of terrorism. The representative of an NGO highlighted that religious leaders could play a role in combating extremism at the local, regional and international levels.

37. Some delegates called for a distinction to be made between State and non-State actors and indicated that, as parties to international human rights treaties, States had obligations to uphold human rights, whereas terrorists were criminals and should be treated as such. One delegate noted that combating terrorism involved political and security issues that would be dealt with more appropriately by the General Assembly and the Security Council; the Human Rights Council should focus on ensuring that any measures taken to combat counter-terrorism do not impact human rights. Another delegate highlighted the importance of the Council being able to reaffirm a united and consensual position on this issue.

B. Combating terrorism while respecting human rights

38. Participants highlighted the obligations of States to protect the human rights of individuals under their jurisdiction and to take counter-terrorism measures that complied

with international law, in particular the right to freedom of expression. They also noted the impact that counter-terrorism measures could have on human rights, including the prohibition of torture and arbitrary detention and the right to a fair trial. The need to comply with the principles of distinction and proportionality in armed conflict under international humanitarian law was also stressed. Those were all principles that needed to be adhered to when preventing terrorism.

39. Many delegates highlighted the complementarity between security and human rights, while acknowledging that current State practices often mistakenly pitted the two principles against one another. One delegate, speaking on behalf of a group of States, said that States must ensure that their actions complied with the Charter of the United Nations, international human rights law, international humanitarian law and international refugee law, by protecting their populations while ensuring fair trials for persons accused of having committed terrorist acts, as well as assisting victims. Another delegate considered that anti-terrorism strategies should safeguard rights and freedoms, while yet another stressed the importance of the prohibition of torture and ill-treatment and of States becoming parties to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and its Optional Protocol.

40. One delegate said that States should deny safe haven to those who incited, planned, financed, supported or committed terrorist attacks. Another delegate noted that, despite United Nations resolutions to combat terrorism over the previous two decades, certain terrorist organizations continued to be financed, including by States, and that that practice must be stopped. One delegate stated that robust and decisive measures needed to be taken in that regard, not only by the countries affected, but also by the international community as a whole. It suggested that the international community commission comprehensive studies on the origins, motives and funding of terrorist groups.

41. Several participants called for all terrorist acts to be punished and for a holistic approach to countering terrorism that required expanding the scope of legal instruments to bring the perpetrators of terrorist acts to justice. In response to questions regarding the responsibility of States to protect populations against widespread and systematic human rights violations by non-State armed groups, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism stressed that accountability must be ensured on both sides of the equation and that public officials engaged in counter-terrorism activities must be brought to justice. With regard to accountability for violations of the rights of victims of terrorism perpetrated by non-State armed groups, the Special Rapporteur stated that, although the Security Council had declared ISIL a threat to international peace and security and had stressed the need to bring perpetrators to justice, it had been very reluctant to authorize military action pursuant to its powers under chapter VII of the Charter of the United Nations or to refer the situation in Iraq and Syrian Arab Republic to the International Criminal Court. He added that the Security Council resolution putting ISIL on the list of terrorist organizations would not prevent it from continuing to commit human rights abuses. The Special Rapporteur also underlined that the time had come to recognize that the permanent members of the Security Council had an obligation to act and that, in the event of reports of genocide, all members of the Council, individually, may have a specific legal responsibility to take action and to refrain from using their veto power to block action to prevent that most serious of international crimes.

42. The Chief of the Implementation Support Section III of UNODC Terrorism Prevention Branch stated that concrete efforts should be made to prevent terrorism, including adhering to the rule of law, which contributed to avoiding radicalization. He recalled that measures to criminalize incitement and recruitment must be fully compatible with the principle of legality. Such measures often relied on intelligence and circumstantial

evidence, which could pose challenges in terms of human rights. Thus, appropriate rule of law-based approaches aligned with the principles of necessity and proportionality must be identified. He also mentioned that UNODC had integrated human rights good practices in its curricula and believed that more engagement with parliamentarians was important.

43. A number of delegates cautioned that attempts to prevent terrorism were unnecessarily and disproportionately infringing on human rights — particularly civil and political rights. One delegate noted that the freedoms of peaceful assembly, expression and association facilitated a range of other human rights and were key elements of open and democratic societies because the ability to share and challenge ideas, and to organize was vital to the health of any society. A society without those rights would stagnate. Under human rights law, any limitations on the freedom of expression must be provided by law and be necessary for respect for the rights or reputation of others or the protection of national security, public order, public health or morals. Any limitations must be in accordance with an appropriate, transparent and legal framework and national security agencies must have appropriate authority and oversight to allow States to respond quickly to threats to national security while respecting their human rights obligations. Another delegate said that State efforts should not constrain civil society and that, when States committed human rights violations in the name of counter-terrorism, they played into the hands of terrorist groups. Other delegates noted that social media had often been used to spread radical messages and for purposes such as incitement to terrorism.

44. Representatives of NGOs and national human rights institutions provided specific examples of instances in which the freedoms of speech, expression and association had been curtailed as States attempted to combat terrorism. Concern at laws on terrorism that lacked the requisite specificity was voiced and reference was made to overly broad counter-terrorism measures which had a negative impact on and arbitrarily restricted human rights and which were in breach of the principle of legality. States should not use counter-terrorism as a smokescreen to stifle dissenting voices and Governments had a responsibility to protect those under their jurisdiction from extremist attacks, but should not use counter-terrorism as a reason to prosecute alleged terrorism offences in mass trials, conduct mass surveillance or pass legislation with large discretionary powers.

45. One delegate, speaking on behalf of a regional group of States, referred to the problematic use of the death penalty in counter-terrorism efforts. Concern was expressed that States resorted to the death penalty for authors of acts of terrorism, even when the offence of terrorism was broadly and vaguely defined. The fact that intergovernmental organizations provided assistance to States that applied the death penalty was highlighted, and the panellists were asked about the steps that United Nations agencies had taken to ensure that the support and assistance they provided did not render them complicit in executions. In response, the Deputy Director of the Counter-Terrorism Implementation Task Force Office and the United Nations Counter-Terrorism Centre stated that the Secretary-General continued to condemn the death penalty in all circumstances and that the work of the Counter-Terrorism Implementation Task Force Office was conducted within the international human rights legal framework. The Chief of Implementation Support Section III stated that UNODC technical assistance interventions integrated protection of human rights in all areas. He noted that UNODC had suspended cooperation with countries that had not respected human rights or democratic principles.

46. One delegate highlighted the need for women's rights to be central to all efforts to counter terrorism, noting that extremists had placed the subordination of women and the denial of their rights at the heart of their strategy. It advocated for the Human Rights Council to continue to advance the promotion and protection of women's full and equal enjoyment of all human rights.

47. With reference to the impact of counter-terrorism measures on international humanitarian law, one delegate stated that the Government had paid a colossal price for the ongoing war on terrorism, and deemed that all States were responsible for avoiding casualties of non-combatants or "collateral damage". The delegate stated that it was vital to ensure respect for the rule of law and due process of law and to avoid illegal practices such as torture, incommunicado detention and extrajudicial killings.

48. Participants noted that, although terrorist acts jeopardized peace and security and threatened social and economic development, the option of launching wars in the name of countering terrorism must be meticulously considered. The so-called "war on terrorism" had fostered an ideology of fear and repression that ultimately created enemies and promoted violence. Also, some Governments used terrorism as an excuse to subvert political opponents.

49. The international community and States should do more to strengthen education, training, awareness-raising and development because they were important bulwarks against isolation, disenchantment and radicalization of youth. With regard to ensuring that counter-terrorism measures respected human rights, the Counter-Terrorism Implementation Task Force Office had developed basic human rights reference guides and specific modules to build the capacity of law enforcement bodies. The Counter-Terrorism Implementation Task Force Office worked with a wide range of national and regional partners, most recently the African Union, to ensure their compliance with the United Nations Global Counter-Terrorism Strategy. It conducted training for police, worked with partners to combat the financing of terrorism and collaborated with national actors to find ways to build trust between civil society actors and the security establishment. However, such capacity-building interventions threatened to be undermined by the corrosion of State legitimacy that occurs when a State undertakes counter-terrorism measures that disrespect due process.

50. Several delegates referred to the need to tackle the root causes of terrorism, including by preventing the spread of violent extremism through different media. One delegate's Government had engaged in preventive actions against terrorism, published a list of wanted persons, worked with international organizations to bring perpetrators of terrorism to justice, created a rehabilitation centre to provide intellectual rehabilitation for former terrorists and provided significant financial support to an international counter-terrorism centre in 2005. The delegate stated that international efforts should focus on three vital dimensions: prevention, deterrence and security, and policymaking.

51. Member States highlighted the need for more global coordination. Regarding coordination efforts, one delegate's Government had coordinated with counter-terrorism and judicial practitioners worldwide, including at the International Centre for Counter-Terrorism, in the Netherlands, and the International Institute for Justice and the Rule of Law, in Malta; another delegate stressed that success in the fight against terrorism went hand in hand with progress in strengthening cooperation and exchange of information at the international, regional and subregional levels and it had worked as part of the global initiatives against international terrorism.

V. Conclusions

52. **In their concluding remarks, the panellists highlighted the enduring value of the United Nations Global Counter-Terrorism Strategy, which remains of core relevance almost 10 years after its adoption. While the fourth pillar of the Strategy specifically focuses on human rights, it was emphasized that the entire Strategy rests on human rights principles. Respect for those principles is a prerequisite to any effective counter-terrorism response. Measures taken in breach of these principles**

only serve to foster a sense of injustice; they can have a corrosive effect on the legitimacy of a State in the eyes of the people and undermine all the pillars of the Strategy.

53. In terms of the practical application of human rights principles, the panellists referred to the existing guidance relating to the implementation of counter-terrorism measures in a manner that complies with human rights, including the collection of best practices compiled by the previous Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin. The panellists also noted the need for strengthened cooperation between States, international organizations and civil society to assist in finding human rights-compliant solutions to challenging issues, such as responding to threats posed by foreign fighters.

54. Finally, the panellists highlighted the importance of ensuring and fulfilling the rights of victims of terrorism. Victims of terrorism need to be given access to information and to have a real voice in society. While having a voice is their right, it could also be an integral part of a preventive strategy, whereby victims provide a compelling counter-narrative of the horrific and destructive impact of terrorism on people's lives.

55. Recent developments have brought to the fore the issue of conditions conducive to terrorism, which is the focus of the first pillar of the Strategy and closely linked to the issue of respect for human rights while countering terrorism. While there was remarkable consensus on what constituted conditions conducive to terrorism at the time that the Strategy was developed, insufficient action on that point has been taken. Therefore, the emphasis on preventing and countering violent extremism, including through the Secretary-General's forthcoming plan of action on the issue, is much needed.

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Follow-up to and implementation of the Vienna Declaration and Programme of Action

Study on the impact of the world drug problem on the enjoyment of human rights

Report of the United Nations High Commissioner for Human Rights*

Summary

In its resolution 28/28, the Human Rights Council requested the United Nations High Commissioner for Human Rights to prepare a study, in consultation with States, United nations agencies and other relevant stakeholders, to be presented to the Council at its thirtieth session, on the impact of the world drug problem on the enjoyment of human rights, and recommendations on respect for and the protection and promotion of human rights in the context of the world drug problem, with particular consideration for the needs of persons affected and persons in vulnerable situations. The present report was prepared pursuant to the request of the Council.

* Late submission

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I. Introduction

1. In its resolution 28/28, the Human Rights Council requested the United Nations High Commissioner for Human Rights to prepare a study, in consultation with States, United Nations agencies and other relevant stakeholders, to be presented to the Council at its thirtieth session, on the impact of the world drug problem on the enjoyment of human rights, and recommendations on respect for and the protection and promotion of human rights in the context of the world drug problem, with particular consideration for the needs of persons affected and persons in vulnerable situations.

2. Requests for information were sent to States and other stakeholders. Submissions were received from 24 States, 4 United Nations agencies and other international organizations, 4 national human rights institutions and 35 non-governmental organizations.[1]

3. Three treaties form the core legal framework of the United Nations international drug control regime: (a) the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, which brought plants such as cannabis, the coca bush and the opium poppy under international control; (b) the Convention on Psychotropic Substances of 1971, which did the same for synthetic substances and precursor chemicals used in manufacturing drugs; and (c) the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, which increased the scope of international policing of the drug trade and highlighted the connection between the drug trade and organized crime (see art. 3 (5)). These treaties bring hundreds of illicit substances under international control, criminalizing virtually every aspect of the unauthorized production and distribution of those substances, although production, distribution and possession for medical and/or scientific purposes is permitted.[2] While human rights are not specifically addressed in these treaties, the primary goal of the international drug control regime, as stated in the preamble of the 1961 Convention, is the protection of the health and welfare of humankind.

4. The International Narcotics Control Board oversees implementation of all three drug conventions. It monitors illicit drug production and trade, as well as access to controlled substances for scientific and medicinal purposes, and investigates States that do not comply with treaty requirements. The Commission on Narcotic Drugs classifies narcotic and psychotropic drugs under different levels of restriction; it also serves as a governing body of the United Nations Office on Drugs and Crime (UNODC) and approves the budget of the Fund of the United Nations International Drug Control Programme.

5. In its resolution 69/201, the General Assembly reaffirmed that the world drug problem must be countered in full conformity with the Charter of the United Nations and with full respect for all human rights. By its resolution 51/12, the Commission on Narcotic Drugs called for the promotion of human rights in implementing international drug control treaties, and the International Narcotics Control Board has stated that human rights must be taken into account when interpreting international drug control treaties. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has argued that when the international drug control regime and international human rights law conflict, human rights obligations should prevail (see A/65/255, para. 10).

[1] The submissions are available from www.ohchr.org/EN/HRBodies/HRC/Pages/WorldDrugProblem.aspx.

[2] See Single Convention on Narcotic Drugs of 1961, art. 2 (5).

II. Right to health

A. Access to treatment

6. The right to health is provided for in article 12 of the International Covenant on Economic Social and Cultural Rights. Under articles 2 (2) and 3 of the Covenant, States are required to implement the right to health on a non-discriminatory basis, which includes extending that right to drug users.

7. The Special Rapporteur on the right to health has underlined the distinction between drug use and drug dependence. Drug dependence is a chronic, relapsing disorder that should be medically treated using a biopsychosocial approach. Drug use is neither a medical condition nor does it necessarily lead to drug dependence. People who use drugs and people who are dependent on drugs possess the same right to health as everyone else, and those rights cannot be curtailed if the use of drugs constitutes a criminal offence (see A/65/255, para. 7). The Special Rapporteur has noted that the same standards of ethical treatment apply to the treatment of drug dependence as to other health-related conditions, including with regard to the right of a patient to make decisions about treatment and to refuse treatment.

8. The Special Rapporteur has emphasized that health-care personnel have an obligation to provide treatment on a non-discriminatory basis and not to stigmatize or violate a patient's human rights. Nevertheless, people who use drugs may be subject to discrimination in health-care settings. People who inject drugs, for example, may have poorer access to health care in some countries, including for the treatment of HIV/AIDS. This may be due to unjustified restrictions by health-care providers on the provision of heath care for people who inject drugs.[3] The Special Rapporteur noted that care providers may not have adequate information or training concerning harm reduction measures (see A/65/255, para. 46). The World Health Organization (WHO) has recommended training health workers on issues of stigma and non-discrimination, to achieve better health outcomes.[4]

9. Individuals have sometimes been denied access to medical treatment on the grounds of their prior or current drug use, where evidence does not justify denial of treatment. Such denial has occurred on the rationale that a person's drug use would make him or her unable to adhere to treatment. The Special Rapporteur notes that adherence to medical treatment is not necessarily lower among persons who use drugs, and should be assessed on an individual basis (see A/65/255, paras 23-24).

10. Outreach programmes are useful in providing information and referral health services to drug users in the community. Information and education programmes can minimize harm to individuals who use drugs and encourage drug dependent persons to seek treatment.[5]

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[3] World Health Organization (WHO), United Nations Office on Drugs and Crime (UNODC) and Joint United Nations Programme on HIV/AIDS (UNAIDS), *Technical Guide for Countries to Set Targets for Universal Access to HIV Prevention, Treatment and Care for Injecting Drug Users* (2012), p. 26.

[4] WHO, *Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations* (July 2014), pp. 96-99.

[5] Submission of the Special Rapporteur to the Committee against Torture (19 October 2012), p. 6. Available from www.ohchr.org/Documents/Issues/Health/drugPolicyLaw.pdf.

B. Harm reduction

11. Harm reduction interventions aim to reduce the harms associated with the use of psychoactive drugs, without necessarily discouraging use. They include needle and syringe programmes, prescription of substitute medications, drug-consumption rooms, promotion of non-injecting routes for the administration of drugs, overdose prevention practices, and outreach and education programmes (see A/65/255, para. 50). Persons who inject drugs are at a heightened risk of contracting HIV, hepatitis B and C,[6] and tuberculosis.[7]

12. The Committee on Economic, Social and Cultural Rights,[8] the Committee on the Rights of the Child[9] and the Special Rapporteur on the right to health have all determined that a harm reduction approach is essential for persons who use drugs. WHO, UNODC and the Joint United Nations Programme on HIV/AIDS (UNAIDS) promote harm reduction for injecting drug users.[10] The Office of the United Nations High Commissioner for Human Rights has supported harm reduction and the Human Rights Council, in its resolution 12/27, recognized the need for harm reduction programmes.

13. Needle and syringe programmes involve the provision of sterile injection equipment to injecting drug users. WHO has endorsed the use of such programmes, noting that they reduce HIV infections substantially, in a cost-effective manner, without any major negative consequences.[11] Needle and syringe programmes eliminate contaminated needles, which reduces the risk of transmitting HIV and other blood-borne diseases such as viral hepatitis, in particular hepatitis B and hepatitis C (see A/65/255, para. 51).[12]

14. Opioid substitution therapy [13] is an evidence-based approach involving the prescription of medications such as methadone or buprenorphine to treat opioid dependence. Opioid substitution therapy decreases the prevalence of injecting drug use and of sharing injecting equipment, thereby reducing the risk of contracting HIV and other blood-borne viruses, and is effective in managing withdrawal from opioids and preventing a relapse into drug use (see A/65/255, para. 52). WHO has recommended that all people from key populations who are dependent on opioids be offered and be given access to opioid substitution therapy.[14]

15. Drug overdoses, most of which involve opioids, are the main cause of drug-related deaths. Opioid substitution therapy reduces the use of drugs by injection and thus of overdosing by almost 90 per cent.[15] The Special Rapporteur on the right to health and WHO have highlighted that first aid training for the administration of naloxone, which

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[6] WHO, *Guidance on Prevention of Viral Hepatitis B and C among People Who Inject Drugs*, policy brief (July 2012).

[7] Harm Reduction International, *Global State of Harm Reduction 2012*.

[8] See E/C.12/RUS/CO/5, E/C.12/ZAZ/CO/1, E/C.12/EST/CO/2 and E/C.12/UKR/CO/5.

[9] In its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health.

[10] WHO, UNODC and UNAIDS, *Technical Guide*, pp. 10-26.

[11] WHO, "Effectiveness of sterile needle and syringe programming in reducing HIV/AIDS among injecting drug users" (Geneva, 2004), p. 28, and WHO, *Consolidated Guidelines*, p. 4.

[12] WHO, "Four ways to reduce hepatitis infections in people who use drugs" (21 July 2012) and UNAIDS, *The Gap Report* (Geneva, 2014), p. 173.

[13] Opioid substitution therapy is also referred to as opioid maintenance treatment, opioid agonist maintenance treatment or medication assisted treatment, according to WHO.

[14] WHO, *Consolidated Guidelines*, p. 4.

[15] WHO, *Community Management of Opioid Overdose* (Geneva, 2014), p. 3.

counters the effects of opioid overdose, can prevent overdose-related deaths and minimize the harm associated with drug overdose (see A/65/255, para. 54).[16]

16. Providing drug users with access to drug-consumption rooms can contribute to preventing the transmission of diseases and to reducing damage to the veins, as well as encourage users to make use of treatment and other services. Drug-consumption rooms have contributed to reducing overdose rates and increased access to medical and social services (see A/65/255, para. 54).

17. As of 2014, needle and syringe programmes had been implemented in 90 countries and opioid substitution therapy was available in 80 countries. However, needle and syringe programmes have been confirmed to be absent in 68 countries where drugs are injected. In 2014, it was reported that there were 88 drug-consumption rooms worldwide, of which only two were outside of Europe, Australia and Canada.[17]

18. The lack of needle and syringe programmes, in particular, has a direct impact on the spread of HIV. People who inject drugs account for approximately 10 per cent of all new HIV infections and for up to 30 per cent of new HIV infections outside sub-Saharan Africa. Worldwide, an estimated 12.19 million people inject drugs, of whom 1.65 million are living with HIV.[18] WHO has estimated, on the basis of data from 49 countries, that the average risk of HIV infection is 22 times greater among people who inject drugs than among people in the general population; in 11 of those countries, the risk is at least 50 times higher.[19]

19. Among the benefits associated with harm reduction programmes is the increased entry into HIV/AIDS treatment programmes (see A/65/255, para. 57). UNODC, WHO and UNAIDS have recommended that a comprehensive package of harm reduction services be integrated into national AIDS programmes, both as an HIV prevention measure and to support adherence to antiretroviral therapy services and medical follow-up for people who use drugs.[20]

20. One study compared countries that comprehensively and consistently adopted approaches based on harm reduction without punitive approaches with countries that steadfastly resisted the harm reduction programmes and focused instead on punitive approaches. It found that the prevalence of HIV among people who injected drugs in Australia, Germany, Switzerland and the United Kingdom of Great Britain and Northern Ireland was less than 5 per cent, whereas in the Russian Federation and Thailand HIV prevalence among people who injected drugs was over 35 per cent.[21]

C. Heath care in prison

21. Drug use, including by injection, has been consistently documented to occur in prisons throughout the world. High rates of sharing injecting equipment leads to an elevated risk of transmitting HIV in prisons. Persons in custodial settings are entitled, without discrimination, to the same standard of health care found on the outside, including with regard to prevention, harm reduction and antiretroviral therapy. Continuity of care is critical

[16] WHO, *Consolidated Guidelines*, p. 4.
[17] Harm Reduction International, *The Global State of Harm Reduction 2014*.
[18] UNODC, *World Drug Report 2015* (United Nations publication, sales No. E.15.XI.6), p. ix.
[19] WHO, *Consolidated Guidelines*, p. 5.
[20] WHO, UNODC and UNAIDS, *Technical Guide*, pp. 10-21.
[21] Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights and Health* (New York, July 2012) and the United Nations Development Programme (UNDP), *Addressing the Development Dimensions of Drug Policy* (June 2015), p. 19.

for those entering places of detention and who have been receiving treatment such as opioid substitution and antiretroviral therapy or treatment for tuberculosis, as interrupting such treatment has serious health consequences.[22]

22. The Special Rapporteur on the right to health has stated that if harm reduction programmes and evidence-based treatments are made available to the general public, but not to persons in detention, this contravenes the right to health. However, in 2014, while opioid substitution therapy was available in 80 countries, only 43 countries provided such therapy.He has also argued that, given the substantially higher health risks associated with incarceration, harm reduction programmes should be implemented and drug dependent persons should be treated so as to meet public health objectives, even if these services are not yet available in the community (see A/65/255, para. 60).

23. Health protection measures, including harm reduction measures, are effective in prisons and treatment programmes for people who use drugs, and are urgently needed in all prison settings.[23] Drug dependence treatment has also been noted to be highly effective in reducing crime, as treatment and care within prisons, or as alternatives to imprisonment, reduce rates of relapse, HIV transmission and recidivism.[24]

D. Obstacles to achieving the right to health

24. The Special Rapporteur on the right to health has noted that drug users in States that criminalize drug use may avoid seeking health care for fear that information regarding their drug use will be shared with authorities, which could result in arrest and imprisonment, or in treatment against their will. The use of drug registries (lists of people who use drugs) may deter individuals from seeking treatment, especially given that violations of patient confidentiality have been frequently documented in States that maintain such registries (see A/65/255, para. 20, and A/64/272, para 23).

25. The Special Rapporteur has observed that criminalizing drug use and possession has led to risky forms of drug use designed to evade criminal prohibitions, which has in turn resulted in increased health risks for drug users. Risky forms of drug use may include the sharing of syringes and injection supplies, hurried or risky injecting and the use of drugs in unsafe places. The preparation of drugs in a hurry, to avoid detection by law enforcement officers, may increase the risk of overdose, vascular accidents and infections. The Special Rapporteur has noted that criminalizing drug use and possession may lead to an increased risk of illness, including from HIV infection, among people who use drugs (see A/65/255, paras. 25-26).

26. The Special Rapporteur has stated that these risks may be compounded by the drug user's reluctance, for fear of arrest, to seek health assistance in preparing and injecting drugs. He noted that criminalizing drug use increases the risk of drugs becoming contaminated with harmful or even deadly substances (see A/65/255, paras. 25-26). He added that criminalizing the dissemination of information, including on safe practices pertaining to drug use and harm reduction, is not compatible with the right to health because it hinders individuals' ability to make informed choices about their health.[25]

[22] WHO, UNODC and UNAIDS, *Technical Guide*, p. 26, and WHO, *Consolidated Guidelines*, p. 5.

[23] WHO Regional Office for Europe, *The Madrid Recommendation: Health Protection in Prisons as an Essential Part of Public Health* (Copenhagen, 2010), pp. 3-4.

[24] UNODC and WHO, "Principles of drug dependence treatment", discussion paper (2008), p. 14.

[25] Submission of the Special Rapporteur to the Committee against Torture (19 October 2012), p. 6.

27. The Special Rapporteur has observed that some States opposed to harm reduction measures have criminalized the carrying of needles, syringes and other drug paraphernalia,[26] in contravention of the *International Guidelines on HIV/AIDS and Human Rights*.[27] Fear of arrest and criminal sanctions may deter individuals from participating in needle and syringe programmes and from carrying sterile equipment, which increases the likelihood of using unsterile equipment and transmitting diseases. Legislation penalizing the carrying of such equipment, including by outreach workers, is a barrier to HIV control.[28] Promoting the use and supply of methadone, which is used in opioid substitution therapy, is a criminal offence in some countries.[29]

28. WHO has recommended decriminalizing drug use, including injecting drug use, as doing so could play a critical role in the implementation of its recommendations on health sector interventions, including harm reduction and the treatment and care of people who use drugs.[30] UNAIDS too has recommended decriminalizing drug use as a means to reduce the number of HIV infections and to treat AIDS.[31]

29. The Special Rapporteur has identified many ways in which criminalizing drug use and possession impedes the achievement of the right to health. He has called for the decriminalization of drug use and possession as an important step towards fulfilling the right to health. He has noted that decriminalizing drug use cannot be equated with legalizing it. Decriminalization means that drug use and possession remain legally prohibited but that criminal penalties, if they are applied at all, are minor and of a non-custodial nature. Legalization, by contrast, involves no prohibition of the relevant conduct (see A/65/255, para. 62).

30. The Special Rapporteur has noted as positive the decriminalization experience in Portugal (see A/65/255, para. 64). In 2001, all drugs for personal use were decriminalized and drug use was characterized as an administrative offence. This was combined with an increased public health and social response to assist drug users. Portugal has not witnessed a material increase in drug use; in fact, indicators for certain groups show a decrease. Positive effects have included the destigmatization of drug users and the unburdening of the criminal justice system.[32] The International Narcotics Control Board has indicated that the move to decriminalize drug use in Portugal was consistent with the 1988 Convention.[33] In total, 22 States have adopted decriminalization measures of one kind or another, although not always on the grounds of promoting public health.[34] The Special Rapporteur has indicated that decriminalization should be accompanied by an expansion in drug treatment programmes and drug education (see A/65/255, para. 67). On 26 June 2015, on the occasion of the International Day against Drug Abuse and Illicit Trafficking, the Secretary-General stated that consideration should be given to alternatives to criminalization and incarceration of people who use drugs and that there should be an increased focus on public

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[26] Ibid.

[27] United Nations publication, sales No. E.06.XIV.4, p. 30.

[28] WHO, UNODC and UNAIDS, *"Provision of sterile injecting equipment to reduce HIV transmission" policy brief* (2004), p. 2.

[29] Harm Reduction International, *Global State of Harm Reduction 2014*.

[30] WHO, *Consolidated Guidelines*, p. 91.

[31] UNAIDS, *The Gap Report*, p. 183.

[32] Submission of Portugal. See Artur Domoslawski, *Drug policy in Portugal: the Benefits of Decriminalizing Drug Use* (Warsaw, Open Society Foundations, 2011).

[33] *Report of the International Narcotics Control Board for 2004*, p. 80.

[34] Ari Rosmarin and Niamh Eastwood, *A Quiet Revolution: Drug Decriminalisation Policies in Practice across the Globe* (London, Release, 2012). Jamaica has decriminalized cannabis use (see the Dangerous Drug Amendment Act, 2015, para. 6, amending sect. 7C of the Act).

health, prevention, treatment and care, as well as on economic, social and cultural strategies. Decriminalization has been called for by a number of civil society organizations on the grounds that criminalization poses a major obstacle to public health responses to drug users and their right to health.[35]

E. Access to essential medicines

31. In the preamble to the 1961 Convention, it is recognized that the medical use of narcotic drugs is indispensable for the relief of pain and suffering. Nevertheless, millions of people worldwide who require essential medicines for pain, drug dependency and other health conditions find that availability is often limited or absent. The Special Rapporteur on the right to health noted that access to these medications is often excessively restricted for fear that they will be diverted from legitimate medical uses to illicit purposes (see A/65/255, para. 41).

32. Restricting access to opioids affects not only the availability of opioid substitution therapy but also three unrelated areas where access to controlled medicines is essential: (a) management of moderate to severe pain, including as part of palliative care for people with life-limiting illnesses; (b) certain emergency obstetric situations; and (c) management of epilepsy (see A/65/255, para. 42).

33. In its general comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights stated that ensuring access to essential drugs, including opioids, is an essential element of the right to health and that States must comply with this obligation regardless of resource constraints. The Special Rapporteur has noted that access to controlled drugs is a critical part of the right to health and recommended that States increase access to controlled essential medicines (see A/65/255, paras. 40-47 and 76).

34. The International Narcotics Control Board has consistently found that availability of essential controlled medicines is too limited in many countries. In its 2014 annual report, the Board noted that approximately 5.5 billion people, or three quarters of the world's population, live in countries where access to medicines containing narcotic drugs is low or non-existent and have inadequate access to treatment for moderate to severe pain. The Board also noted that 92 per cent of the world's morphine (an opioid) is consumed by 17 per cent of the world's population, primarily in North America, Oceania and Western Europe. The Board and WHO have both recognized that unnecessarily restrictive drug control regulations and practices are a significant barrier to accessing essential controlled medicines.[36]

[35] Submissions of the Global Commission on Drug Policy, pp. 3-5; Human Rights Watch, p. 2; the International Drug Policy Consortium, p. 5; Release, p. 8; and the Women's Harm Reduction International Network, p. 9.

[36] See *Report of the International Narcotics Control Board for 2014*, para. 12, and WHO, *Ensuring Balance in National Policies on Controlled Substances: Guidance for Availability and Accessibility of Controlled Medicines* (Malta, 2011).

III. Rights related to criminal justice

A. Prohibition of arbitrary arrest and detention

35. It has been alleged that police have sometimes targeted areas at or near drug treatment centres to make arrests.[37] These practices may be linked to how law enforcement success is measured in efforts to counter drug use, especially where the number of arrests for drug use has been used as an indicator of successful law enforcement activity. It has been reported that in some countries the police obtain the health information of people who are registered with drug dependence treatment clinics and use that information for law enforcement purposes (see A/65/255, para. 20).[38] In some countries, the police is reported to have targeted drug users to meet arrest quotas or to have harassed users for money or, in the case of women, sex.[39]

36. The Working Group on Arbitrary Detention has found that people who use drugs are particularly at risk of arbitrary detention (see E/CN.4/1998/44/Add.2, paras. 81 and 97-99, and A/HRC/27/48/Add.3, paras. 111-119). Some States reportedly provide for automatic pretrial detention for persons arrested for drug use without examining the circumstances of each individual case, although the Inter-American Commission on Human Rights has declared this practice to be incompatible with human rights.[40] According to article 9 of the International Covenant on Civil and Political Rights, anyone arrested or detained on a criminal charge shall be promptly brought before a judge, which the Human Rights Committee has interpreted, in paragraph 33 of its general comment No. 35 (2014) on liberty and security of person, to mean a few days from the time of arrest, with 48 hours being ordinarily sufficient. There have been reports of persons detained for drug-related offences not being registered or promptly brought before a judge. In some States, an arrested person suspected of a drug-related offence can be kept in custody without being charged for a substantially longer time than a person detained for other offences can be.[41]

B. Prohibition of torture and other forms of ill-treatment

37. In some States, it has been reported that people who use drugs are subjected to violence during detention, often as a means of extracting confessions or obtaining information about other drug users or traffickers.[42] The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Human Rights Committee have noted that some law enforcement agencies have intentionally withheld opioid substitution therapy from drug dependent suspects in custody to extract confessions or obtain information, a practice that they have found to constitute torture (see A/HRC/22/53, para. 73, A/HRC/13/39/Add.2, para. 85, and A/68/295, para. 68). The Special Rapporteur on torture has also found such a practice to be torture or ill treatment, in

[37] Submission of the Women's Harm Reduction International Network, p. 4.

[38] Submission of the Russian Civil Society Mechanism for Monitoring of Drug Policy Reforms in Russia, pp. 5-6.

[39] Global Commission on HIV and the Law, *HIV and the Law*, and submission of Eurasian Harm Reduction Network, p. 4.

[40] Submission of Centro de Estudios Legales y Sociales, Conectas Human Rights and Corporacion Humanas, p. 4, and Inter-American Commission on Human Rights, *Report on the Use of Pretrial Detention in the Americas* (2013), para. 137.

[41] Submission of Centro de Estudios Legales y Sociales et al, pp. 5, 9 and 27.

[42] François-Xavier Bagnoud Center for Health and Human Rights, *Health and Human Rights Resource Guide* (Harvard University, 2013), p. 4.9.

certain circumstances, even when it is carried out without the intention of obtaining information (see A/HRC/22/53, para. 74).

C. Right to life

38. Article 6 of the International Covenant on Civil and Political Rights provides that, in those States which have not abolished the death penalty, the sentence of death can only be applied for the "most serious crimes". The Human Rights Committee has determined that drug-related offences do not meet the threshold of "most serious crimes" (see CCPR/C/IDN/CO/1, para. 10, CCPR/CO/84/THA, para. 14, and CCPR/C/SDN/CO/3, para. 19). The United Nations High Commissioner for Human Rights, the Special Rapporteur on torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Economic and Social Council, the General Assembly and the Secretary-General support this interpretation (see A/HRC/10/44 and Corr.1, para. 66, A/HRC/4/20, paras. 51-53, and A/HRC/24/18, para. 24).[43] The International Narcotics Control Board has encouraged States that impose the death penalty to abolish it for drug-related offences (see A/HRC/27/23, para. 31).

39. Nevertheless, it has been estimated that 33 countries or territories continue to impose the death penalty for drug-related offences, resulting in approximately 1,000 executions annually.[44] Drug-related offences account for the majority of executions carried out in some countries and are mandatorily punished by death in a number of States (see E/2015/49 and Corr.1, para. 72).[45]

40. Human rights organizations have expressed concern about international funding and technical assistance for drug control programmes in States that retain the death penalty for drug-related offences.[46] UNODC, which opposes the death penalty, has stated that if "a country actively continues to apply the death penalty for drug offences, UNODC places itself in a very vulnerable position vis-à-vis its responsibility to respect human rights if it maintains support to law enforcement units, prosecutors or courts within the criminal justice system". It noted that "at the very least, continued support in such circumstances can be perceived as legitimizing government actions. If, following requests for guarantees and high-level political intervention, executions for drug-related offences continue, UNODC may have no choice but to employ a temporary freeze or withdrawal of support".[47] The European Union has emphasized that actions such as legal, financial or other technical assistance to third countries should not contribute to the use of the death penalty, and specifically indicated that the death penalty should not be imposed for drug-related crimes.[48]

41. The Special Rapporteur on extrajudicial, summary or arbitrary executions has expressed concern about extrajudicial executions against people in the war on drugs (see A/HRC/26/36/Add.1, para. 8), a concern voiced also by States and non-governmental

[43] See also Economic and Social Council resolution 1984/50 and General Assembly resolution 39/118.

[44] Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2012*, p. 5.

[45] See also the submission of Amnesty International, p. 2.

[46] Reprieve, Harm Reduction International, International Drug Policy Consortium, Transform, Release, Espolea, Drug Policy Alliance, Diogenis, Andrey Rylkov Foundation, Canadian Drug Policy Coalition and Forum Droghe, "INCB report launch and the death penalty for drug offences" (joint statement, 3 March 2015).

[47] UNODC, "UNODC and the promotion and protection of human rights" (2102), p. 10.

[48] Council of the European Union, "EU guidelines on the death penalty" (doc. No. 8416/13, annex).

organizations.[49] Impunity for extrajudicial killings is also a source of concern in operations aimed at the drug trade. The Special Rapporteur on torture has criticized ineffective investigations and relative impunity for actors alleged to have committed such human rights violations, and the United Nations High Commissioner for Human Rights has stressed the need for accountability for gross violations of human rights (see A/HRC/11/2/Add.2, paras. 33 and 53, and A/HRC/26/36/Add.1, paras. 81, 111 and 117).[50]

D. Right to a fair trial

42. In some States, law enforcement responsibility for drug-related offences has been reportedly shared with or transferred to the military, often resulting in an excessive use of violence.[51] It has been reported that people accused of drug-related offenses have been tried before military courts or special courts that may fall short of fair trial standards.[52] Concerning the trial of persons in military or special courts, the Human Rights Committee has said that civilians should be tried in the ordinary courts, subject to narrowly defined exceptional circumstances, and that the protections of the International Covenant on Civil and Political Rights cannot be limited or modified because of the military or special character of the court.[53]

43. In some States, it has been reported that accused persons may be given a choice between serving a sentence after conviction or submitting to drug treatment. Bearing in mind the right of a person to refuse treatment, this practice may be a cause for concern, in particular given the level of coercion involved.[54] Some States subject individuals to additional penal measures unless the treatment is successful, ignoring the particular circumstances of each individual's condition and that treatment for drug dependence has been characterized by medical professionals as often involving relapse on one or more occasions or requiring several types of treatment.[55] The Working Group on Arbitrary Detention has determined that when treatment is undertaken as an alternative to incarceration, under no circumstances may it extend beyond the period of the criminal sentence (see A/HRC/4/40/Add.2, para. 74).

44. Some States do not allow persons convicted for drug-related offences to be considered for suspended sentence, parole, pardon or amnesty that are available to those convicted of different crimes.[56] The Working Group on Arbitrary Detention has recommended that States amend their laws if they include provisions to that effect (see A/HRC/4/40/Add.3, para. 102 (c)).

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[49] Submissions of Switzerland, the Mexican Commission for the Defence and Promotion of Human Rights, pp. 3-4, the Count the Costs Initiative, p. 7, and Human Rights Watch, pp. 2-3.

[50] See also the High Commissioner's opening statement at the twenty-seventh session of the Human Rights Council.

[51] Submissions of Centro de Estudios Legales y Sociales, Conectas Human Rights and Corporacion Humanas, pp. 3 and 6-9, International Service for Human Rights and Peace Brigades International, p. 6, and the Mexican Commission for the Defence and Promotion of Human Rights, pp. 1-6.

[52] Count the Costs, "The war on drugs: undermining human rights", p. 4.

[53] General comment No. 32 (2007) on the right to equality before the law and to a fair trial, para. 22.

[54] Global Commission on Drug Policy, *Taking Control: Pathways to Drug Policies that Work* (2014), p. 22.

[55] UNDP, *Addressing the Development Dimensions of Drug Policy*, p. 25, and the submission of Release, p. 2.

[56] Submission of Centro de Estudios Legales y Sociales, Conectas Human Rights and Corporacion Humanas, p. 27.

45. The focus on arresting and imprisoning drug users for possession or use small amounts has often resulted in prolonged pretrial detention, and persons convicted of drug-related offences frequently constitute a very high percentage of total prisoners in many countries. Mandatory sentencing and disproportionately long sentences for drug possession or use have often resulted in sentences longer than those for serious crimes such as murder, rape, kidnapping or bank robbery, and have contributed to overincarceration and prison overcrowding.[57] The Working Group on Arbitrary Detention has called for reform to ensure that sentences for drug-related offences are proportionate to the nature of the crime (see E/CN.4/2003/8/Add.3, paras. 44 and 72 (a), A/HRC/4/40/Add.4, paras. 47 and 87, and A/HRC/22/44/Add.2, para. 125). The Working Group has found that overincarceration for drug-related offences contributes significantly to prison overcrowding and that overcrowding can call into question compliance with article 10 of the International Covenant on Civil and Political Rights, which guarantees that everyone in detention shall be treated with humanity and respect for their dignity (see E/CN.4/2003/8/Add.3, para. 44, A/HRC/4/40/Add.3, para. 64, and A/HRC/4/40, paras. 59-80).

E. Human rights violations in compulsory detention centres

46. Persons who use drugs or who are suspected of using drugs may be confined in compulsory drug detention and rehabilitation centres without trial or an evaluation of their drug dependency, often for months or years, and frequently outside the supervision of the criminal justice.[58]

47. Compulsory drug detention and rehabilitation centres, sometimes referred to as re-education through labour centres, typically subject detainees to long hours of physically strenuous exercise, physical and verbal abuse, beatings, solitary confinement and enforced labour, according to the Special Rapporteur on torture (see A/HRC/22/53, paras. 40-42). The Special Rapporteur on the right to health noted that these practices are not evidence-based and medical professionals who are trained to manage drug dependence are often inaccessible. Moreover, treatment is often conducted en masse and disregarding the need for informed consent to be given on an individual basis (see A/65/255, paras. 31-33).

48. Non-consensual experimental treatment, torture, ill-treatment and sexual violence have also been reported at compulsory detention centres (see A/HRC/22/53, paras. 40-42). Imposition of compulsory treatment, at the expense of not having access to opioid substitution therapy and other harm reduction interventions, also increases the risk of disease, particularly through HIV infection (see A/65/255, para. 36).

49. These practices have been condemned by 12 United Nations entities in a joint statement in which they call for the closure of compulsory detention centres.[59] Nevertheless, compulsory drug detention centres, many of which are located in East and South-East Asia, continue to detain approximately 235,000 people.[60]

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[57] Submissions of Colectivo de Estudios Drogas y Derecho; and Harm Reduction International and Penal Reform International, p. 1.

[58] Harvard FXB Center for Health and Human Rights and Open Society Foundations, *Health and Human Rights Resource Guide* (2013), p. 4.7. See also Open Society Foundations, *Treated with Cruelty: Abuses in the Name of Rehabilitation* (2011) and "Human rights abuses in the name of drug treatment: reports from the field" (2009).

[59] Available from www.unaids.org/sites/default/files/en/media/unaids/contentassets/documents/document/2012/JC2310_Joint%20Statement6March12FINAL_en.pdf.

[60] UNDP, *Addressing the Development Dimensions of Drug Policy*, p. 25.

IV. Prohibition of discrimination

50. Different forms of discrimination may result once an individual has a criminal record resulting from a conviction for a drug-related offence. These may include obstacles to obtaining employment, adverse effects on the custody of children or visitation rights, losing government benefits such as access to public housing, food assistance or student financial aid, or difficulties concerning travel abroad.[61] This has been a factor in the decision by some States to decriminalize the personal use and possession of drugs.[62] As former Secretary-General Kofi Annan said on 19 May 2015 at a side event on the theme "Strengthening a public health approach when addressing the world drug problem": "A criminal record for a young person for a minor drug offence can be a far greater threat to their well-being than occasional drug use".

A. Ethnic minorities

51. It has been reported that members of ethnic minorities, in particular those who are poor and live in marginalized communities, may be particularly subject to discrimination in the context of drug enforcement efforts. In the United States of America, for example, African Americans make up 13 per cent of the population, yet account for 33.7 per cent of drug-related arrests and 37 per cent of people sent to state prisons on drug charges. African Americans are 3.7 times more likely to be arrested for possessing or using marijuana than whites are, despite comparable usage rates. Similar disparities have been observed in countries such as Australia, Canada and the United Kingdom.[63] One law enforcement official observed that it was harder to intercept the sale and purchase of drugs in offices or affluent neighbourhoods than it was in poor and marginalized neighbourhoods, where such activity was often conducted in the street or other public areas and where police controls were more frequent.[64]

B. Women

52. Globally, women are imprisoned for drug-related offences more than for any other crime. In several Latin American countries, 60-80 per cent of women in prison are incarcerated for drug-related offences.[65] In some States, women convicted of drug-related offences constitute the fastest growing part of the prison population. One in four women in prison in Europe and Central Asia is incarcerated for drug-related offences, with levels as high as 70 per cent in some countries. The Committee on the Elimination of Discrimination against Women has expressed concern at the number of women imprisoned for drug-related offences, observing that this may be indicative of women's poverty (see CEDAW/C/UK/3 and 4). Women are typically involved in selling small quantities of drugs and are used as "mules" to carry small amounts of drugs from one country to another. Many of them are

[61] Count the Costs, "The war on drugs: promoting stigma and discrimination", pp. 3-5.
[62] Rosmarin and Eastwood, *A Quiet Revolution*.
[63] Submissions of the Global Commission on Drug Policy, p. 6, and Harm Reduction International and Penal Reform International, p. 4.
[64] Count the Costs, "The war on drugs: promoting stigma and discrimination", pp. 7-8.
[65] Corina Giacomello, "Women, drug offenses and penitentiary systems in Latin America" (International Drug Policy Consortium, 2013).

young, illiterate and single mothers who have to take care of their children and other family members.[66]

53. It has been reported that women who use drugs may, depending on the laws and policies in force, face losing custody of their children, forced or coerced sterilization, abortion or criminal penalties for using drugs during pregnancy. In certain States, women who use drugs may be subject to detention during their pregnancy. Women who use drugs may not receive the appropriate care when they are pregnant.[67] WHO has published guidelines for the identification and management of substance use and related disorders during pregnancy.

54. Discrimination may exist in women's prisons where harm reduction, including opium substitution therapy, may not be available.[68] The Committee on the Elimination of Discrimination against Women has recommended that States provide gender-sensitive and evidence-based drug treatment services, including harm reduction programmes for women in detention, to reduce the harmful effects of drug use (see CEDAW/C/GEO/CO/4-5, para. 31 (e)).It has been reported that women who use drugs are often the targets of violence, including sexual violence, perpetrated by their partners and law enforcement officers. Women may be forced to have sex to avoid arrest or punishment by law enforcement officers.[69] Women who use drugs and who are also sex workers are reported to be even more vulnerable.[70]

V. Rights of the child

55. Article 33 of the Convention on the Rights of the Child provides that States parties shall take all appropriate measures to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

56. In its general comment No. 3 (2003) on HIV/AIDS and the rights of the child, the Committee on the Rights of the Child noted that, in most countries, children have not benefited from HIV prevention programmes related to substance use and that, where HIV prevention programmes exist, they have largely targeted adults. It observed that injecting practices using unsterilized instruments increase the risk of HIV transmission and that programmes and policies aimed at reducing substance use and HIV transmission must recognize the particular sensitivities and lifestyles of children. In its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, the Committee endorsed harm reduction as an important approach to minimizing the negative health impacts of substance abuse. It called for children to benefit from harm reduction programmes in its concluding observations (see CRC/C/UKR/CO/4, para. 59, CRC/C/AUT/CO/3-4, para. 51, and CRC/C/ALB/CO/2-4, para. 63 (b)).

57. The Committee has recommended that children receive accurate and objective information on drugs. It has called for children who use drugs not to be subjected to

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[66] Count the Costs, "The war on drugs, promoting stigma and discrimination", pp. 8-9.

[67] Submission of the Women's Harm Reduction International Network, pp. 6-7.

[68] Ibid., p. 5.

[69] Submission of the Open Society Institute, pp. 49-52. See also UNODC, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), WHO and the International Network of People Who Use Drugs, "Women who inject drugs and HIV: addressing specific needs" (2014).

[70] Submissions of the Women's Harm Reduction International Network, p. 8, and the Eurasian Harm Reduction Network, pp. 4-5.

criminal proceedings and for the possession of drugs by children to be decriminalized (see CRC/C/OPAC/MEX/CO/1, para. 29, and CRC/C/UKR/CO/4, paras. 59-60). However, the Committee found that, in practice, in most States children who use drugs are subject to criminal prosecution and often have no access to harm reduction and drug treatment services. The Committee criticized the aerial fumigation of drug crops because of its effects on children (see CRC/C/COL/CO/3, para. 72). It also condemned the practice of placing children in compulsory drug detention and rehabilitation centres (see CRC/C/KHM/CO/2, paras. 55-56).

VI. Rights of indigenous peoples

58. The 1961 Convention imposes restrictions on the cultivation of coca bush, opium poppy and cannabis plant for indigenous, traditional and religious uses, and requires that opium smoking be abolished within 15 years, that coca leaf chewing be abolished within 25 years and that cannabis use be abolished within 25 years at the latest (art. 49 (2)). The 1988 Convention requires States to criminalize the possession, purchase and cultivation of coca for personal consumption and to take measures to prevent the cultivation of and to eradicate illicit crops. In doing so, States must "take due account of traditional licit uses, where there is historic evidence of such use" (art. 14 (2)).

59. In 2009, the Permanent Forum on Indigenous Issues called for the amendment or repeal of those portions of the 1961 Convention regarding coca leaf chewing that are inconsistent with the rights of indigenous peoples to maintain their traditional health and cultural practices, as recognized in articles 11, 24 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples (see E/2009/43-E/C.19/2009/14, para. 89).[71] In 2011, the Plurinational State of Bolivia withdrew from the 1961 Convention, subsequently re-acceding to it with a reservation concerning the traditional practices associated with the coca leaf.[72]

60. Some States have recognized exceptions to the application of the drug control treaties, including on grounds of religious belief. In the United States, the Native American Church is exempted from the prohibition on consuming peyote, a controlled substance, in religious ceremonies.[73] In Italy, a drug conviction was reversed on appeal because a lower court had not considered the arguments made by the Rastafarian defendant based on his religious convictions.[74] In Jamaica, the Government in 2015 changed its legislation to allow Rastafarians the right to use cannabis in their religious ceremonies.[75] Previous jurisprudence has tended not to permit the use of controlled drugs in religious ceremonies as a manifestation of religious beliefs, although sometimes with sharply divided views.[76]

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[71] See also the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the Convention for the Safeguarding of the Intangible Cultural Heritage.

[72] See *Report of the International Narcotics Control Board of 2011*, paras. 270-280.

[73] See American Indian Religious Freedom Act Amendments of 1994, sect. 3 (a).

[74] Supreme Court of Italy, judgement No. 14876 (2012).

[75] The Dangerous Drug (Amendment) Act, 2015, para. 6, amending sect. 7C of the Act.

[76] See *Prince v. President of the Law Society of the Cape of Good Hope and Others*, Constitutional Court of South Africa (2002), in which four of the nine judges agreed that denying the petitioner access to the bar because of his religious cannabis use amounted to a disproportionate infringement on the religious freedom of the Rastafari, and CCPR/C/91/D/1474/2006.

VII. Conclusions and recommendations

61. The right to health should be protected by ensuring that persons who use drugs have access to health-related information and treatment on a non-discriminatory basis. Harm reduction programmes, in particular opioid substitution therapy should be available and offered to persons who are drug dependent, especially those in prisons and other custodial settings. Consideration should be given to removing obstacles to the right to health, including by decriminalizing the personal use and possession of drugs; moreover, public health programmes should be increased. The right to health requires better access to controlled essential medicines, especially in developing countries.

62. The prohibition of arbitrary arrest and detention, torture and other forms of ill-treatment and the right to a fair trial should be protected in accordance with international norms, including in respect of persons who are arrested, detained or charged for drug-related offences. Drug dependent persons in custodial settings should not be denied opioid substitution therapy as a means of eliciting confessions or other information, and opioid substitution therapy should be provided as part of a detainee's right to health in all circumstances. Compulsory detention centres should be closed.

63. The right to life of persons convicted of drug-related offences should be protected and, in accordance with article 6 of the International Covenant on Civil and Political Rights and the jurisprudence of the Human Rights Committee, such persons should not be subject to the death penalty. The right to life should be protected by law enforcement agencies in their efforts to address drug-related crime, and only proportional force should be used, when necessary. Extrajudicial killings should be subject to prompt, independent and effective investigations to bring the alleged perpetrators to justice.

64. Ethnic minorities and women who possess or use drugs, or who are "microdistributors", should be protected against discrimination. Consideration should be given to reforming laws and policies to address the disparate impact of drug policies on ethnic minorities and women. Providing training to law enforcement, health personnel and social service workers who come into contact with drug users should also be considered, to eliminate discrimination.

65. Taking into account the severe impact that a conviction for a drug-related offence can have on a person's life, consideration should be given to alternatives to the prosecution and imprisonment of persons for minor, non-violent drug-related offences. Reforms aimed at reducing overincarceration should take into account such alternatives.

66. The rights of the child should be protected by focusing on prevention and communicating in a child-friendly and age-appropriate manner, including on the risks of transmitting HIV and other blood-borne viruses through injecting drug use. Children should not be subjected to criminal prosecution, but responses should focus on health education, treatment, including harm reduction programmes, and social re-integration.

67. Indigenous peoples have a right to follow their traditional, cultural and religious practices. Where drug use is part of these practices, the right of use for such narrowly defined purposes should in principle be protected, subject to limitations provided for in human rights law.

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Technical assistance and capacity-building

Technical assistance provided to assist in the promotion and protection of human rights in Iraq

Report of the United Nations High Commissioner for Human Rights

Summary

In the present report, submitted pursuant to Human Rights Council resolution 28/32, the United Nations High Commissioner for Human Rights describes the human rights-related challenges in Iraq and the technical assistance provided by the Human Rights Office of the United Nations Assistance Mission for Iraq in cooperation with the Office of the United Nations High Commissioner for Human Rights.

The report addresses the protection of civilians and supporting community reconciliation, and reflects the need to strengthen the administration of justice, including by improving respect for due process and fair trial standards through comprehensive legal and institutional reforms.

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I. Introduction

1. The present report, submitted pursuant to Human Rights Council resolution 28/32, was prepared in cooperation with the Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI). The Office of the United Nations High Commissioner for Human Rights (OHCHR) continues to assist UNAMI in implementing its mandate on the promotion and protection of human rights in Iraq. UNAMI is located in Baghdad and has field offices in Basra, Erbil and Kirkuk. Despite the difficult security situation, UNAMI continues to conduct its activities in governorates of Iraq in coordination with relevant governmental and non-governmental institutions.

II. Background

2. The human rights situation in Iraq remains alarming in the light of violations and abuses committed by the so-called Islamic State in Iraq and the Levant (ISIL) and associated groups. The non-international armed conflict continues to affect large areas of the Anbar, Diyala, Kirkuk, Ninewa and Salah al-Din Governorates, while acts of violence and terrorism continue in Baghdad and other areas of the country. On 13 March 2015, OHCHR expressed its concern about the situation in Iraq in its report on the human rights situation in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups.[1]

3. In March, Iraqi security forces and associated forces began military operations to retake Tikrit, Salah al-Din Governorate from ISIL, which had held the town since June 2014. Military operations commenced on 2 March with an assault by about 30,000 Iraqi security personnel, Popular Mobilization Units, armed groups and tribal fighters. Booby traps, roadside bombs and snipers impeded Iraqi and associated forces in taking the town. The offensive was halted on 14 March, ostensibly pending the arrival of reinforcements and to allow civilians to leave the city, but resumed on 27 March. Prime Minister Haidar al-Abadi announced that the State had retaken control of Tikrit on 31 March.

4. On 13 April, ISIL attacked the country's largest refinery, in Baiji, Salah al-Din Governorate, a strategically important facility accounting for more than a quarter of the State's oil refining capacity. ISIL surrounded the refinery and set fire to three oil storage tanks. On 21 May, Iraqi security forces reportedly broke the siege by ISIL. Clashes continued, with ISIL targeting the Iraqi forces with suicide vehicle-borne improvised explosive devices. ISIL fighters reportedly set areas of the refinery on fire to hinder the advance of Iraqi forces. Gains by the Iraqi forces and the Popular Mobilization Units were announced, but reportedly suffered heavy casualties on 6 June after the detonation of one or more improvised explosive devices. On 9 June, ISIL reportedly advanced into the city in the wake of a number of suicide and mortar attacks. At the end of the period under review, heavy fighting around Baiji was continuing.

5. On 9 April, the Government of Iraq began military operations against ISIL in Anbar; the next day, ISIL launched an attack on Ramadi District on multiple fronts. On 9 May, the authorities began enlisting 1,000 new recruits to a Sunni militia to assist the Iraqi security forces in Anbar. By 16 May, the city had fallen to ISIL, which then began moving eastwards. Reportedly, some 3,000 Popular Mobilization Forces were deployed to the Habbaniyah airbase to fight ISIL, while 60,000 fighters were deployed to Baghdad to protect the city.

[1] A/HRC/28/18

6. After the fall of Ramadi, reports received contained allegations that ISIL had abducted and executed a significant number of civilians and captured Iraqi security personnel. There were also allegations that ISIL was preventing civilians from leaving the city. By 26 May, 220,164 people had fled Ramadi and its environs.[2] Large numbers of internally displaced persons made their way towards Baghdad, Karbala and Babil Governorates, although many were denied entry unless they had a sponsor resident.

7. In late May, ISIL seized al-Walid border crossing between the Syrian Arab Republic and Iraq, launched an offensive to retake Anbar and carried out attacks east of Fallujah using vehicle-borne improvised explosive devices, killing at least 17 soldiers.

8. On 2 June, ISIL reportedly closed the gates of a dam in Ramadi, cutting water supplies to al-Khalidiya and al-Habbaniya to the east, which were held by Iraqi security forces and Popular Mobilization Units. Possibly as a result, the level of water in Thi-Qar Governorate dropped, in some places critically. On 4 June, several sheikhs and tribal leaders from Anbar reportedly pledged allegiance to ISIL after a meeting in Fa'ilujah on 3 June. It is not clear whether support was pledged under duress. At the end of the period under review, clashes were continuing in several areas of Anbar.

9. The situation in Ramadi prompted the Kirkuk Provincial Council Security Committee to stop all road movement to and from areas controlled by ISIL on 20 May. On 25 May, the main Kirkuk-Baghdad road was reopened for part of the day. On 3 June, an explosion caused by an airstrike hit a storage facility, causing a significant number of casualties and damage to surrounding structures. Some reports indicated that the facility contained chemical fertilizers, while others claimed that it was used to build improvised explosive devices. One Council member informed media outlets that 150 civilians had been killed and wounded, including women and children, in addition to 100 ISIL militants.

10. During the period under review, Diyala Governorate witnessed a steady increase in attacks targeting members of its communities, culminating in May with 22 verified incidents, including at least 28 killings and 13 abductions. In most incidents, perpetrators remain unidentified. Explosions and attacks continued through June, with an individual detonating a vehicle-borne improvised explosive device at a security checkpoint in Baladruz on 6 June. The incident killed at least 11 civilians and wounded 14 others.

11. ISIL marked the one-year anniversary of the capture of Mosul, Ninewa Governorate. It continued to have control over all aspects of everyday life in the city. Dress codes have been imposed and freedom of movement is severely restricted. ISIL has imposed its own education curriculum, and demands steep rents and taxes. Punishment for violating ISIL rules is severe, often imposed by its self-appointed courts, and included flogging, amputation, beheading, stoning, immolation and other cruel and unlawful punishment. Reports have been received of a food scarcity in some areas under ISIL control in the Governorate.

12. In May, ISIL issued new instructions through mosques, pamphlets and its local radio channel ahead of the holy month of Ramadan. According to the instructions, women are not allowed to leave their home from dawn to sunset, and no stores, except grocery stores and pharmacies, may open during this period. On 17 May, ISIL divided Ninewa Governorate into three "states" – Jazeera, Tigris and Ninewa – and appointed a *wali* for each one. An order was also issued preventing residents from leaving Mosul, save for medical emergencies. In mid-June, local media reported that ISIL had banned grain exports from Mosul and was demanding a share of harvests from farmers.

[2] International Organization for Migration (IOM) Displacement Tracking Matrix, Round XXI – May 2015.

13. In Baghdad, terrorist attacks with improvised explosive devices were made on a daily basis, killing and wounding civilians. Unidentified bodies continued to be found around Baghdad and its outlying areas.

14. UNAMI/OHCHR continued to monitor and report on the human rights situation. UNAMI/OHCHR has repeatedly called upon all armed groups to comply strictly with applicable international humanitarian and human rights law and to take all feasible precautions to spare civilians the effects of hostilities. UNAMI and OHCHR issued joint reports on the protection of civilians in the armed conflict in Iraq on 18 August 2014,[3] 26 September 2014[4] and 23 February 2015.[5] They also issued joint reports on the death penalty in Iraq in October 2014,[6] and on the judicial response to allegations of torture in February 2015.[7] The ongoing hostilities and violence have, however, had a severe impact on the ability of UNAMI and OHCHR to verify furthermore allegations in areas under the control of ISIL or to provide technical assistance in those areas.

III. Human rights priorities and technical assistance needs

A. Protection of civilians

1. Impact of the conflict on civilians

15. From 1 January 2014 to 31 May 2015, UNAMI/OHCHR recorded at least 46,114 civilian casualties (15,612 killed and 30,502 wounded) as a result of the non-international armed conflict in Iraq.[8] Owing to severe limitations to the capacity of UNAMI and OHCHR to verify reports of civilian casualties, these figures should be regarded as the minimum. Additionally, the number of civilians killed as a result of secondary effects of violence, such as lack of access to food, water or medicine, is unknown.

16. UNAMI/OHCHR supported the Government's efforts to fulfil its primary responsibility to protect civilians from the effects of conflict and violence, and to meet its obligations under international human rights and humanitarian law. For instance, in May, it organized training courses for staff members of the National Operations Centre, composed of representatives of various government ministries, on State obligations in relation to international humanitarian law and human rights principles, including principles of proportionality and distinction, and reporting on incidents involving civilian casualties.

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[3] OHCHR/UNAMI, Report on the Protection of Civilians in the Non International Armed Conflict in Iraq: 5 June – 5 July 2014.

[4] OHCHR/UNAMI, Report on the Protection of Civilians in Armed Conflict in Iraq: 6 July – 10 September 2014.

[5] OHCHR/UNAMI, Report on the Protection of Civilians in Armed Conflict in Iraq: 11 September – 10 December 2014.

[6] OHCHR/UNAMI, Report on the Death Penalty in Iraq, Baghdad, October 2014.

[7] OHCHR/UNAMI, Report on the judicial response to allegations of torture in Iraq, Baghdad, February 2015.

[8] The civilian casualty figures given in the present report include civilians and civilian police officers, including civilian casualties from Anbar Governorate. UNAMI was prevented from effectively verifying casualties in conflict areas owing to the prevailing insecurity. The figures for casualties from Anbar Governorate, provided by the Anbar Health Directorate, might be underestimated owing to the heightened volatility of the situation and disruptions to services. In some cases, UNAMI was able to verify only partially certain incidents in the governorate.

17. UNAMI/OHCHR held a round table with Ninewa Provincial Council members in June to discuss the protection of civilians and the need for community reconciliation. The importance of accountability and justice for victims was emphasized as a means of overcoming the cycle of violence.

2. Unlawful killings and abductions

18. UNAMI/OHCHR continued to receive numerous credible reports of gross violations and abuses of human rights and serious violations of international humanitarian law being perpetrated by ISIL against civilians in an apparent widespread or systematic manner. In some instances, these may amount to war crimes, crimes against humanity, and genocide (see A/HRC/28/18).

19. In particular, ISIL continued to target individuals and groups, including former members of the Iraqi security forces, public figures, professionals and persons perceived to be associated with the Government or against ISIL ideology or rule. Sources reported that, on 9 June, ISIL killed 134 former members of the Iraqi security forces by shooting them in the head in Mosul, Ninewa. The victims had been held captive for months and forced to "repent" to ISIL, whose members suspected that they intended to join forces to liberate Mosul. Reports received described how ISIL also targeted and murdered religious and community leaders, as well as professionals, including journalists and doctors, who refused to conform to its rules or to work in its service.

20. ISIL carried out executions following sentences imposed its self-appointed courts, particularly in Mosul. Sources reported that residents were gathered and forced to watch executions and other cruel treatment. Often reasons for killings and abductions were unknown.

21. UNAMI/OHCHR also received reports of abuses and violations perpetrated by the Iraqi security forces and associated forces. In some cases, civilians and civilian infrastructure appear to have been directly targeted during military operations; in other cases, military operations may have been carried out without proper regard for the principles of distinction and proportionality. Reports indicated that some armed forces were operating outside of government control and perpetrating a range of violations and abuses, including unlawful killings, abductions and destruction of property in areas recently liberated from ISIL.

22. UNAMI/OHCHR also received reports of targeted attacks and reprisals against persons believed to support or to be associated with ISIL, particularly Sunni Arab community members. In early June, a video was posted on the Internet purporting to show members of a militia burning the body of a man hanging by his feet, reportedly in Garma, north-east of Fallujah, Anbar Governorate. Members of the militia are heard accusing the man of having been a member of ISIL.

23. UNAMI/OHCHR documented human rights abuses and violations committed by unidentified perpetrators. Detonation of improvised explosive devices in public places, unlawful killings and abductions continued to be reported in large numbers, particularly in Baghdad, as well as in other areas of the country not directly affected by the armed conflict. Targeted individuals included parliamentarians, tribal and religious leaders, judges and other public officials.

3. Destruction of civilian property and infrastructure

24. ISIL continued deliberately to target civilian objects in attacks, in particular the property of individuals perceived to oppose ISIL, including the homes of tribal leaders, public officials and local leaders, as well as government buildings. UNAMI/OHCHR also

verified reports that ISIL had planted explosives in homes when retreating from territory, killing civilians when they returned.

25. ISIL also continued to destroy places of religious and cultural significance, which ISIL considers to be un-Islamic, including mosques, churches, ancient sites, shrines, tombs and graves. ISIL loots the sites before destroying them.

26. UNAMI/OHCHR also received allegations that pro-government forces had destroyed civilian property. On 1 April, UNAMI received reports that militias had looted and burned more than 200 civilian homes and 300 shops in Tikrit, Salah al-Din Governorate in the first 48 hours of the liberation of the city. The Prime Minister established a committee to investigate the events. The committee issued a statement noting that 67 homes and 85 shops were burned down in Tikrit at the beginning of April. UNAMI met with tribal and community representatives from Tikrit to discuss these reports, as well as the alleged targeting of civilians by militia forces. The means of creating conditions for the safe, dignified and voluntary return of displaced persons to their homes were also discussed.

B. Groups in focus

1. Women

27. The 2005 Constitution provides for fundamental women's rights, including equal treatment before the law. UNAMI/OHCHR nonetheless observed that Iraqi women continued to face violence, discrimination and unequal treatment. Cases of domestic violence are believed to go largely unreported and unpunished, and victims remain largely unprotected. The lack of comprehensive official statistics on domestic violence prevents a full understanding and the formulation of a proper response to such cases.

28. Strengthening the legal protection framework against gender-based violence continues to be a priority. The draft family protection law, the text of which substantively fails to meet the State's obligations under international law, has been pending before the Council of Representatives. The draft shelter policy for victims of domestic violence also remained under review. The Criminal Code No. 111 of 1969 continues to permit "honour" as a lawful defence in crimes alleging violence against women and family members, although it is reported that many hundreds of women die from honour killings each year. UNAMI/OHCHR also received credible reports of women being trafficked inside Iraq. Women remain underrepresented in public life.

29. The family protection units of the Iraqi police, aimed at providing protection to victims of domestic violence, are underresourced and understaffed, and remain inaccessible to most victims; consequently, women who are the victims of domestic and other forms of gender-based violence still have nowhere to seek sanctuary or to claim their legal rights. Those who seek protection are often housed in women's prisons and detention centres.

30. In the Kurdistan region of Iraq, the full realization of women's rights continues to be hindered by a number of factors, including deep-rooted patriarchal norms, legislative gaps and a culture of silence. The participation of women in political life remains limited. The Government of the Kurdistan region of Iraq has, however, introduced a number of legislative, institutional and policy reforms aimed at addressing violence against women and other forms of discrimination.

31. The ability of women to enjoy a full range of human rights has deteriorated considerably with the ongoing armed conflict. ISIL, in particular, continues to perpetrate gross violations of women's rights. It has imposed strict codes of behaviour, including

regulations concerning dress and freedom of movement. Women must be fully covered while in public and are only allowed to move in public in the company of an appropriately related male chaperone. Severe forms of punishment are imposed for non-compliance, including fines, lashings and even execution.

32. ISIL continued to target female community and political leaders, subjecting them to abduction, torture and murder. UNAMI/OHCHR continued to receive reports that women and girls held by ISIL, particularly those from ethnic and religious minority communities such as the Yezidi and others, are subjected to harrowing acts of sexual and physical violence and to sexual slavery. UNAMI/OHCHR believes that there may still be as many as 3,500 women and children, and some men, predominantly Yezidi, but also other ethnic and religious communities who are still being held by ISIL. Sexual violence appears to be used by ISIL as a deliberate tactic in targeting diverse ethnic and religious communities.

33. UNAMI/OHCHR works with a range of counterparts, including government actors, institutions, civil society groups and women's right defenders to monitor women's rights to raise awareness and build capacity of local actors. For instance, in the Kurdistan region of Iraq, UNAMI is working with the Directorate for Combating Violence against Women to promote respect for key human rights standards and to raise awareness about violations against women.

34. In mid-May, UNAMI/OHCHR met with a member of the Board of Commissioners of the Iraq High Commission for Human Rights to discuss concerns regarding allegations of violations and abuse of internally displaced persons perpetrated by security forces, including alleged sexual violence. On 2 June, UNAMI/OHCHR also met with the Chairperson of the Committee on Women of the Basra Provincial Council to discuss the protection of civilians and the vulnerability of women and girls during armed conflict. It provided technical advice on the responsibility of State actors and actions to be taken to ensure the protection of women and girls.

35. UNAMI/OHCHR will also seek to implement, inter alia, a number of projects to strengthen the Iraqi legal system and institutions, in particular to address sexual and gender-based violence and to promote gender equality in compliance with international human rights law; to further increase participation of human rights defenders and journalists, including women, in public life at the international, national and local levels; and to increase access to psychosocial support for victims of torture and sexual and gender-based violence.

2. Children

36. Children have been the victims of violence associated with the hostilities and been severely affected by the denial of access to humanitarian assistance and the disruption to education caused by the ongoing conflict. UNAMI/OHCHR also continued to receive reports of forced recruitment and use of children in hostilities by ISIL.

37. The ISIL recruiting campaign continued, with reports in mid-May that ISIL fighters were visiting high schools in Mosul and demanding that students as young as 14 pledge allegiance to the group and to fight in its forces. ISIL subsequently announced at schools and universities that all male students must join ISIL after completing their exams. ISIL posted videos on the Internet purporting to show children being taught its ideology and trained to become fighters. The children in the videos appeared to be as young as 12. Another video appeared to show captured Yezidi children as young as seven being indoctrinated. UNAMI/OHCHR received reports that ISIL has used children as fighters in areas of Sinjar and Zummar in Ninewa Governorate.

38. UNAMI/OHCHR works with the United Nations Children's Fund to monitor and report on violations of the rights of children, contributing to the annual report of the Secretary-General on children and armed conflict, and reporting on relevant violations to the Security Council by way of a global horizontal note coordinated by the Special Representative of the Secretary-General for Children and Armed Conflict.

3. Internally displaced persons

39. The non-international armed conflict in Iraq resulted in the internal displacement of 3,035,592 civilians from January 2014 to 21 May 2015. Over 70 per cent are from Anbar and Ninewa Governorates. As at 21 May, improvements in the security situation in some areas led to the return of 171,204 displaced persons to their places of origin.[8]

40. UNAMI/OHCHR monitors the situation of internally displaced persons across Iraq and – security conditions permitting – conducts regular visits to camps and other locations where displaced persons have settled. UNAMI liaises with authorities and organizations providing support to displaced persons and raises issues of concern during monitoring visits. UNAMI/OHCHR gave capacity-building assistance to staff providing front-line support to displaced persons. For instance, in early June, UNAMI/OHCHR gave training courses on international human rights standards, with a particular focus on the rights of internally displaced persons, humanitarian principles, and the protection of civilians in conflict, to 45 staff members from four camps for displaced persons in Dohuk Governorate. UNAMI/OHCHR, as a full member of the United Nations country team Protection Cluster, also supports work to address the needs of displaced persons.

41. In southern Iraq, where thousands of displaced families have been hosted in camps and collective centres since June 2014, UNAMI/OHCHR and United Nations country team staff members met with officials from the Ministry of Displacement and Migration in Basra in mid-June. Methods of improving coordination among country team agencies and non-governmental organizations regarding the protection of civilians were discussed, and UNAMI/OHCHR gave a briefing on international humanitarian law, including on international crimes.

42. UNAMI/OHCHR has consistently advocated for the full respect of the rights of internally displaced persons, particularly their freedom of movement and access to safety and humanitarian assistance. UNAMI/OHCHR regularly liaises with local government actors, including mayors and governors, concerning the rights of displaced persons, and advocates for appropriate measures to ensure their freedom of movement and access to safety while taking security concerns into account. For instance, UNAMI/OHCHR met with a member of the Kirkuk Provincial Council, city council members and several village and community representatives in Kirkuk to discuss authorization procedures for return to liberated areas, the security concerns of displaced persons, the destruction of property, the appropriation of land and access to humanitarian assistance.

43. On 26 May, UNAMI/OHCHR met with members of the Iraqi police in Kirkuk to discuss the situation of internally displaced persons in the city, including access through checkpoints and registration procedures, as well as reports of arrests of displaced persons in certain areas of the city. UNAMI/OHCHR raised concerns regarding the voluntary nature and safety of the prospective return of displaced persons to areas of origin, as well as protection concerns of women and girls, including early marriage, increased prostitution, and the rising number of street children, who are particularly vulnerable to sexual exploitation. UNAMI/OHCHR also met with the Intelligence Police (*Asayish*) of the

[8] IOM Displacement Tracking Matrix (see footnote 2).

Kurdistan region of Iraq in Kirkuk to discuss the security of displaced persons in the city and to raise the issue of alleged forced returns.

44. UNAMI/OHCHR continuously engages with the Ministry of Human Rights and has developed an agreed timetable for the delivery of joint technical assistance, including training courses on human rights and humanitarian law.

45. In early May, UNAMI/OHCHR met with the Minister for Human Rights to discuss allegations that displaced persons from Anbar seeking refuge and protection in Baghdad had been subjected to threats, kidnapping and killings by armed groups. Reports were also received that displaced persons had been forcibly evicted from Baghdad and sent back to Anbar. The Government was urged to investigate these reports and to respect fully the rights of displaced persons to have access to areas of safety.

46. UNAMI monitored cases of arrest and detention of internally displaced persons attempting to reach areas of safety. Reports indicated that many, if not most, of these detainees had been held by authorities without charge for long periods without access to judicial review or legal representation, and their families had not been informed of their whereabouts. UNAMI regularly monitors detention facilities to follow up on such cases and has advocated with security forces and Government authorities to ensure that international due process standards are respected.

4. Ethnic and religious groups

47. Ethnic and religious groups and minorities in Iraq have endured a history of discrimination and violence. These communities have become more vulnerable owing to the ongoing armed conflict and many have suffered gross violations of their human rights.

48. ISIL has continued to target members of different ethnic and religious communities, including Christians, Faili Kurds, Kaka'e, Sabaeans, Shabak, Shi'a Arabs, Turkmen, Yezidi and others, intentionally subjecting them to a range of abuses and violations of international human rights and humanitarian law. These acts appear to be part of a systematic or widespread policy that aims to suppress, permanently expel or destroy these communities within ISIL areas of control. ISIL continued to publish "justifications", including its requirement to cleanse lands under the control of its self-declared "Islamic caliphate" of "infidels", by forcibly converting, suppressing, expelling or killing people of other faiths or those who do not subscribe to its *takfiri* doctrines. ISIL has imposed on Christians and Sabaeans the requirement to convert to Islam, pay *jezyah* (a protection or toleration tax), be expelled or be killed; for Shias to repent or face penalties (including death) as apostates; and for Yezidi, Kaka'ee and other faith communities (which ISIL regard as infidels) to convert to Islam or be killed. Most recently, ISIL published another "justification" for the sexual enslavement of Yezidi women and other women from communities it regards as *kuffar* (infidels) in its magazine, *Dabiq*.

49. As many as 2,500 men, women and children – predominantly from the Yezidi community but also from other groups – are being held by ISIL. UNAMI/OHCHR fears for their safety and security. Those who have reached safety consistently report lack of basic necessities such as food and hygienic items, forced labour, forced religious conversion, ill-treatment, murder and the regular infliction of physical and sexual violence, including sexual slavery and the trafficking of women and children.

50. UNAMI/OHCHR has been monitoring the situation of minority groups in Iraq, and actively working with local communities to promote respect and protection of their rights. UNAMI met with the elected representative of minority communities in the Basra Provincial Council and legislative staff to give advice and make recommendations on

international standards regarding the protection of civilians, particularly vulnerable ethnic and religious minorities.

51. In June 2015, UNAMI/OHCHR re-established a committee appointed by a conference on the rights of minorities held in Baghdad in March 2014 and attended by representatives of all minority ethnic and religious communities in Iraq. The participants had agreed to a declaration on the rights of minorities in Iraq and a road map of legislative, policy and other reforms that would strengthen their protection and facilitate their full and equal participation in political, social and economic life. The security situation had prevented the committee from convening any meetings until recently.

52. In the Kurdistan region of Iraq, UNAMI/OHCHR offered technical assistance to members of Parliament regarding draft legislation to establish a minorities council with a mandate to protect and promote the rights of minorities in the region. UNAMI/OHCHR made comments on the draft law, advising that the role of the council be made meaningful through elaboration of its mandate and that the issues of its independence and authority of be clarified.

5. Persons with disabilities

53. Across Iraq, UNAMI/OHCHR observed that persons with disabilities were often neglected in public discourse dominated by the ongoing armed conflict. They remain among the most vulnerable communities, and face numerous barriers to their full and equal participation in political, social, economic and cultural life. The full impact of the conflict on this group is unknown and the welfare of those living in areas under ISIL control or where conflict is ongoing remains a grave concern.

54. UNAMI has been working with members of the Government and with civil society to improve the enjoyment of rights by persons with disabilities. For instance, it delivered a training workshop on 26 May in coordination with a local non-governmental organization representing people with disabilities. Approximately 20 people with disabilities attended the workshop, together with government officials working on disability-related issues. The participants were trained on methodologies for improving advocacy to promote greater respect for their rights through an increased understanding of the legal regime of protection of persons with disabilities.

C. Administration of justice

1. Judicial system and respect for due process

55. UNAMI/OHCHR continued to work with relevant government and judicial departments to address shortcomings in the application of due process and fair trial standards. Particular attention is given to respect for procedural guarantees, including the presumption of innocence, access to legal counsel, and consideration of the testimony of witnesses and other evidence provided as opposed to confessions that might have been extracted under duress.

56. UNAMI/OHCHR assists the Government in implementing law, policy and institutional reforms aimed to bring about greater respect for the rule of law, including due process and fair trial standards.

57. In May, UNAMI/OHCHR gave technical assistance to 30 lawyers from Anbar, Baghdad, Diyala and the Kurdistan region of Iraq on the Basic Principles on the Role of Lawyers, human rights standards in the administration of justice, and the legal framework for the protection of internally displaced persons. UNAMI/OHCHR continues to provide

capacity-building assistance to justice actors to strengthen the rule of law and respect for due process, and in this regard will implement a project to facilitate consultations with stakeholders and develop human rights and rule of law training curricula for civilian law enforcement and corrective services officials.

58. UNAMI/OHCHR also brought allegations of enforced disappearance to the attention of the Government. Multiple reports were received that individuals had been detained by Iraqi and Kurdish authorities, but their whereabouts had not been communicated to their families, detainees had not been informed of the charges against them, they had been denied access to legal representatives or were being held incommunicado. UNAMI/OHCHR engaged with the Minister of the Interior, the Minister for Defence, the Minister for Human Rights and the Minister for Justice to ascertain whether disappeared individuals had been detained by any Iraqi authorities and, if so, requested that they provide information on the whereabouts and condition of specified individuals, as well as on the status of any legal proceedings against them. In June 2015 the Government of Iraq responded to the queries of the Committee on Enforced Disappearances in relation to three cases.

2. Detention standards

59. According to the Government, as at 14 April 2014, 27,843 persons were being held in detention centres and prisons administered by the Ministry of Justice. This number included 11,779 detained under the Anti-terrorism Law (both those awaiting trial and those convicted), 926 women and 181 juveniles.[10]

60. Where security conditions allow, UNAMI/OHCHR regularly visits detention centres and prisons under the authority of the Ministry of Justice. Although conditions of detention have improved, problems persist, including overcrowding, poor hygienic conditions and limited medical services in some facilities. UNAMI/OHCHR also noted a lack of specialized facilities to accommodate women and children, who are often held in cells in police stations. Children are often interned in adult facilities.

61. Through its monitoring, UNAMI/OHCHR notified the authorities responsible for detention facilities and the Ministry of Justice of issues of concern and cases requiring attention. It also made recommendations on improving conditions of detention to bring them into line with international standards. Owing to the security situation in the country and the transfer of prisoners and detainees to safe areas, detention centres and prisons have suffered serious overcrowding in already inadequate penitentiary infrastructure.

62. For instance, in early April, UNAMI/OHCHR visited the Basra Central Prison, where many individuals held for terrorism-related offences are detained. UNAMI met with the director to discuss compliance with due process standards, particularly the right of detainees to have access to a lawyer while in detention and facilitation of the right of the accused to prepare an adequate defence. The duties of prison officials and procedures that should be in place when faced with credible allegations of torture were also discussed. The director pointed out that, owing to transfers of detainees from other parts of Iraq, the facility hosted twice as many detainees than its maximum capacity. Similarly, the director of al-Hoot prison in Nassiyira pointed out the same problem in his facility.

63. Overcrowding was exacerbated by the lack of adequate resources for the judiciary to process cases in a timely and efficient manner.

[10] The figures include detainees held in two federal prisons in the Kurdistan region of Iraq. The number of detainees held under the authority of the ministries of the Interior, Defence and Labour and Social Affairs is not known.

64. On 14 April, UNAMI/OHCHR visited al-Rusafa detention facility in Baghdad and subsequently sent recommendations to the Ministry of Justice on improving the conditions of detention. In June, UNAMI/OHCHR visited several detention facilities in Zakho, Dohuk Governorate, and raised concerns with relevant authorities regarding the conditions of detention at an *Asayish* facility.

65. In late April, in coordination with the management of al-Ma'aqal Prison in Basra, UNAMI/OHCHR held a seminar where experts from the University of Basra delivered presentations on prison management, treatment of detainees, and their reintegration into society. The experts discussed, inter alia, international legal standards applicable to persons deprived of their liberty and comparative best practices in prison management that could be adopted in Iraq. The participants included judges, prosecutors, prison officials, lawyers, journalists and representatives of non-governmental organizations.

3. Torture and other ill-treatment

66. UNAMI/OHCHR received allegations from detainees and prisoners that they had been subjected to torture and other ill-treatment. Through direct trial monitoring, UNAMI/OHCHR noted that courts often relied on confessions as the sole or most significant evidence upon which convictions are based, even where the accused person has claimed that the confession was induced through torture.

67. UNAMI/OHCHR has advocated to the Government to ensure that any allegations of torture or other ill-treatment are promptly and properly investigated.

D. National institutions

1. National Human Rights Commissions

68. UNAMI/OHCHR began to advocate for the establishment of an Iraqi High Commission for Human Rights in compliance with the Paris Principles in 2004. The Commission was established by law No. 53 of 2008.

69. UNAMI/OHCHR, in partnership with the United Nations Office for Project Services and the United Nations Development Programme (UNDP), in a project funded by the European Union, provided the Iraqi High Commission for Human Rights with support and technical advice. In May, UNAMI/OHCHR gave training courses to members of the Commission secretariat on the protection of civilians, State responsibility, accountability mechanisms and the role of the national human rights institution. In June, a training course was conducted on monitoring, investigating and reporting on human rights violations and abuses to more than 40 staff members of the Commission secretariat.

70. UNAMI/OHCHR, in partnership with UNDP, also supported the establishment and capacity-building of the Independent Board of Human Rights in the Kurdistan region of Iraq. UNAMI/OHCHR supported the creation of a database to facilitate information-gathering and analysis, and organized training courses on detention monitoring and the investigation and documentation of human rights violations.

71. On 3 November 2014, Iraq was reviewed for the second time by the Working Group on the Universal Periodic Review. A total of 91 States made 229 recommendations on improving the human rights situation, of which the Government accepted 175. UNAMI/OHCHR provided the Government with technical assistance in the preparation of its State report, and also trained members of non-governmental organizations to assist in with the preparation of their stakeholder submissions. UNAMI/OHCHR furthermore provided technical support to a coalition of 29 representatives of non-governmental

organizations from all governorates of Iraq in preparation of their submission to the review. It also gave technical advice to Iraqi High Commission for Human Rights and the Independent Board of Human Rights on their joint submission, and assisted the United Nations country team in preparing its submission. UNAMI/OHCHR is working with the Government on the development of a second national plan of action on human rights to implement the recommendations accepted during the review.

2. Civil society actors

72. UNAMI/OHCHR regularly liaises with civil society partners, human rights defenders and journalists. In mid-June, UNAMI/OHCHR organized capacity-building activities on human rights-based approaches to journalism for 18 journalists in Kirkuk. The activity sensitized participants on special considerations to take into account when reporting on human rights issues.

73. On 24 May, UNAMI/OHCHR met with the Chairperson of the non-governmental organization committee of the Basra Provincial Council and discussed how the ongoing armed conflict has been affecting the work of non-governmental organizations in the governorate. UNAMI provided advice on best practices for civil society organizations to work on protection of civilians and explored means of enhancing cooperation among the Council, non-governmental organizations and UNAMI/OHCHR.

74. Nineteen staff members of a Yezidi non-governmental organization were trained in June in Dohuk Governorate on human rights, humanitarian and protection principles, and monitoring and documenting violations. In addition, UNAMI/OHCHR provided technical assistance to non-governmental organizations in Basra on human rights standards, including the responsibility of State actors in relation to the protection and human rights of civilians.

E. Legal reform

1. Transitional justice

75. UNAMI/OHCHR has been pursuing initiatives to promote community reconciliation. For instance, UNAMI/OHCHR engaged with Government actors in the de-Baathification process. It also offered technical advice on legislation to amend the current justice and accountability law, which mandates the investigation of individuals referred to it and different actions addressing individuals found to have been members of the Baath party.

76. UNAMI/OHCHR also embarked on a community reconciliation programme, which involves working in partnership with Iraqi non-governmental organizations to identify past human rights violations, and individuals and communities that have been affected by them, and to engage in a dialogue on processes and policies that would provide victims with justice, accountability and compensation or support.

2. Criminal laws

77. In the context of the ongoing gross violations of human rights and serious violations of humanitarian law in Iraq, such as those committed by ISIL and associated armed groups, UNAMI/OHCHR has encouraged the authorities to pursue meaningful accountability, particularly for international crimes. At present, war crimes, crimes against humanity and genocide are not within the jurisdiction of the domestic courts. In the Kurdistan region of Iraq, UNAMI/OHCHR met with the Deputy Speaker and the Human Rights Committee of the Parliament to advocate for the inclusion of these crimes in regional legislation so that

perpetrators could be brought to justice in a manner that recognizes the true nature of such crimes. UNAMI/OHCHR also encouraged the Government of Iraq to accede to the Rome Statute of the International Criminal Court and to ratify Protocol to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts. UNAMI/OHCHR conducted training with the Parliamentary Human Rights Committee on the protection of civilians and on international legal obligations with regard to accountability for the commission of international crimes.

3. Anti-terrorism laws

78. UNAMI/OHCHR has serious concerns concerning Anti-terrorism Law No. 13 of 2005 and its conformity with international human rights standards. UNAMI/OHCHR conducted advocacy with the Government of Iraq, the Parliamentary Human Rights Committee, law enforcement officials, the judiciary and non-governmental organizations on the need to amend the law to ensure it complies with international human rights standards. UNAMI/OHCHR has embarked on a technical cooperation project to study thoroughly the law and to propose amendments.

79. UNAMI/OHCHR will implement a number of projects involving consultations with stakeholders with a view to identifying gaps in the criminal system and drafting a comprehensive package of proposed law reforms, and to developing and advocating for a package of policies and approaches that will ensure respect and protection of human rights while countering terrorism.

80. UNAMI/OHCHR also has concerns regarding the anti-terrorism law of the Kurdistan region of Iraq and its lack of conformity with international human rights standards.[11]

81. UNAMI/OHCHR extensively engaged with the authorities in the Kurdistan region of Iraq on the law, and urged that it be brought into conformity with international human rights standards. UNAMI also met with al-Shura Council and the Human Rights Committee of the Kurdistan Parliament to reiterate this position.

4. Death penalty

82. The Government of Iraq continues to implement the death penalty despite repeated calls, including those of the Secretary-General and the United Nations High Commissioner for Human Rights, to implement a moratorium on the death penalty with a view to its abolition, in accordance with relevant resolutions of the General Assembly.

83. While officially no executions have been carried out in Iraq in 2015, UNAMI/OHCHR received reports that four individuals were executed in March in al-Hoot prison in Nassiriyah. UNAMI/OHCHR informed the Government that lack of transparency in the application of the death penalty constitutes a violation of the State's international legal obligations with regard to due process and transparency.

84. UNAMI/OHCHR also intervened with several government officials with regard to a number of cases where individuals (including two foreign nationals) were sentenced to death for crimes allegedly committed while juveniles, urging their execution be immediately stayed and their ages be properly determined, whereupon the verdicts should be set aside and the individuals in question be retried in accordance with standards applicable to juveniles.

[11] For instance, see Human Rights Committee, communication No. 1110/2002 (CCPR/C/82/D/1110/2002), para. 5.2.

85. The Kurdistan Regional Government continues to apply an unofficial moratorium to the death penalty. No executions have taken place in 2015. UNAMI continues to encourage Kurdish authorities to formalize the moratorium by abolishing the death penalty in law.

IV. Conclusions

86. The human rights situation in Iraq remains alarming in the light of violations and abuses committed by ISIL and associated groups. The non-international armed conflict and acts of terrorism continue to inflict tremendous suffering on civilians. ISIL continued to target members of different ethnic and religious communities, intentionally subjecting them to a range of abuses and violations of international human rights and humanitarian law.

87. The ability of women to enjoy the full range of human rights has deteriorated considerably with the ongoing armed conflict. Children suffer from violence and trauma, and bear the brunt of displacement. From 1 January 2014 to 31 May 2015, UNAMI/OHCHR recorded at least 15,612 civilians killed, 30,502 others wounded and at least 3 million persons displaced as a result of the non-international armed conflict in Iraq.

88. UNAMI/ OHCHR continued to monitor and report on the human rights situation and repeatedly called upon all armed groups to comply strictly with applicable international humanitarian and human rights law, and to take all feasible precautions to spare civilians from the effects of hostilities. UNAMI/OHCHR issued joint reports on the human rights situation in Iraq and provided technical support to duty bearers and stakeholders in addressing protection concerns.

89. UNAMI/OHCHR continued to provide training and capacity development to relevant ministries and parliamentary committees, the Iraqi High Commission for Human Rights and various civil society actors.

90. In response to the current crisis and its effects, UNAMI/OHCHR dedicated considerable efforts to promoting and protecting human rights and the rule of law through a three-fold project. UNAMI/OHCHR will develop studies of legislation and policies with a view to submitting proposals on judicial, legal and institutional reforms to the relevant authorities.

91. UNAMI/OHCHR will assist the Government of Iraq in comprehensively reviewing criminal justice laws and policies, including Anti-terrorism Law No. 13 of 2005, to ensure compliance with international human rights standards, including with regard to the rights of due process and fair trial standards, and to introduce amendments to the Criminal Code and other relevant laws to grant domestic courts jurisdiction over international crimes committed in Iraq.

92. UNAMI/OHCHR will advise the Government in undertaking administrative and institutional reforms to ensure that the police forces and all officials engaged in law enforcement and the administration of justice comply with the obligations of Iraq under its Constitution and under international human rights law, including with regard to persons detained in relation to terrorism.

93. In addition, strengthening the legal framework for the protection against gender-based violence continues to be a priority. UNAMI/OHCHR will assist the Government in addressing legal gaps in the protection of women, in compliance with international human rights law, and, in particular, in ensuring that the national strategy on combating violence against women is fully implemented.

94. **UNAMI/OHCHR will design human rights training manuals tailored to government officials and civil society actors, and conduct a series of human rights training courses for them.**

95. **UNAMI/OHCHR will also organize a forum to discuss best practices regarding legal and institutional reforms, in particular on the use of the death penalty in Iraq.**